

2000

Ty Weber and Statewide Bail Bonds v. City of South Salt Lake : Brief of Appellant

Utah Court of Appeals

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TY WEBBER and STATEWIDE)	
BAIL BONDS,)	
)	Case No. 20001021-CA
Plaintiffs/Appellants,)	
)	
-v-)	
)	
CITY OF SOUTH SALT LAKE,)	Priority No. <u>15</u>
)	
Defendant/Appellee.)	

BRIEF OF APPELLANT

**APPEAL FROM ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT, IN THE THIRD
JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH, THE HONORABLE WILLIAM B. BOHLING PRESIDING.**

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FILED
Utah Court of Appeals

AUG 6 2001

Paulette Stagg
Clerk of the Court

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JURISDICTION AND NATURE OF PROCEEDINGS

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated, § 78-2a-3(2)(j), this case having been transferred to the Utah Court of Appeals from the Supreme Court of the State of Utah on December 15, 2000.

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether the trial court erred in determining that Appellants' business operation was not grandfathered by Salt Lake County's granting of a business license to Appellants prior to the annexation of the property by the City of South Salt Lake. This issue presents a question of law as to the interpretation of §10-9-408, Utah Code Annotated, for which the standard of review is correctness. *See, e.g., Hugoe v. Woods Cross City*, 988 P.2d 456, 458 (Utah Ct. App. 1999); *Town of Alta v. Ben Hame*, 836 P.2d 797, 800 (Utah Ct. App. 1992).

2. Whether the trial court erred in determining that Appellants had failed to exhaust their administrative remedies by failing to seek administrative review by the business license hearing board of the City of South Salt Lake, when the City failed to follow its own ordinances concerning its rescinding or denial of Appellants' business license. This issue also presents a question of law, reviewable for correctness. *Id.*

3. Whether the trial court erred in determining that the City's denial of the rezone application concerning Appellants' property was not arbitrary, capricious, and constituted or condoned an illegal reverse spot zoning of the area in which Appellants' property is situated. In reviewing a municipality's decision not to change the zoning classification of a property, the decision is presumed to be valid and the standard of review is to "determine only whether or not the decision is arbitrary, capricious, or illegal." Utah Code Ann. § 10-9-1001(3). The definitions of "arbitrary" and "capricious" are legal issues reviewed for correctness. *Harmon City, Inc. v. Draper City*, 2000 UT App 31 (Utah Ct. App. 2000); *Springville Citizens for a Better Community v. City of Springville*, 1999 UT 25, P22, 979 P.2d 332 (Utah 1999).

CONTROLLING CONSTITUTIONAL PROVISIONS,
STATUTES, AND ORDINANCES

Utah Code Annotated, §10-9-408.

10-9-408. Nonconforming uses and structures.

(1) (a) Except as provided in this section, a nonconforming use or structure may be continued.

The full text of § 10-9-408 appears in the Addendum to this brief.

§ 19.48.010, *et seq.*, of the Salt Lake County zoning regulations.

The full text of §19.48 of the Salt Lake County zoning regulations appears in the Addendum to this brief.

§ 5.02.170 of the ordinances of the City of South Salt Lake (4/98).

5.02.170 Notice of denial, suspension or revocation.

Upon a denial, suspension or revocation of a business license application or business license, the business license official shall cause written notice to be given by personal service or registered mail to the applicant or licensee of his or her decision to deny, suspend or revoke an application or license. Such notice shall include the reasons for the denial, suspension or revocation of such application or license, and shall include any accompanying documentation relating to the business license official's decision to deny, revoke or suspend an application or business license. Such notice shall also include a description, if applicable, of the applicant's or licensee's right to appeal the decision of the business license official. (Ord. 97-23 § 1 (Att. A (part)))

STATEMENT OF THE CASE

Plaintiffs/Appellants Ty Webber and Statewide Bail Bonds (hereinafter referred to as "Statewide") acquired a business license from Salt Lake County for

operation of a bail-bonding business out of Mr. Webber's home, located across the street from the new Salt Lake County Detention Center, at 3350 South 900 West, in Salt Lake County, prior to annexation of the area by the City of South Salt Lake (hereinafter referred to as "the City"). Statewide alleges that the business was therefore grandfathered, so that the City's refusal to issue a current business license to Statewide is in contravention of Statewide's right to a license.

Statewide has also alleged that, following the administrative decisions handed down by the City, the City failed to give Statewide proper notice of the City's denial of the business license in conformity with its own ordinances, and failed to provide Statewide notice of its right to appeal and the timing and methodology for taking such an appeal, along with notice of all other administrative remedies that might have been available. By failing to abide by its own ordinances, the City proceeded in an illegal manner that rendered Statewide incapable of exhausting *any* administrative remedies and makes the City's denial of the business license invalid.

Further, the City's refusal to rezone the area in which Statewide's business is located constitutes a refusal to acknowledge that the site is surrounded on three sides by massive commercial, light- industrial, and very large government complexes, so that denying the rezoning of this small site constitutes an illegal reverse spot zone, making the City's refusal to rezone arbitrary, capricious, and illegal.

STATEMENT OF FACTS

1. On or about July 23, 1998, Appellants Ty Webber and Statewide Bail Bonds paid the required business license fee and applied for a business license from Salt Lake County, to operate a bail bonding company at the location of 3350 South 900 West, Salt Lake County (R. 187; 242, ¶ 4).

2. Salt Lake County issued a business license to Statewide Bail Bonds effective as of July 23, 1998 (R. 13; 243, ¶ 6; 282-3; Addenda 4, 5, 6).

3. Salt Lake County was in the process of converting its computer system from one program to another, so a printed copy of the business license was not prepared until November 4, 1998, but Statewide Bail Bonds was legally conducting business in Salt Lake County as of July 23, 1998 (R. 93; 238; 282; Addendum 6).

4. The bail bonding company was licensed at the location of 3350 South 900 West as a home occupation/business, which was a permitted conditional use within the A-1 (agricultural) zone and was appropriate under ¶ 19.48.030 of the Salt Lake County zoning regulations (R. 116-117, 287-288; Addendum 6).

5. The area within which Statewide's property lies was annexed to South Salt Lake City effective October 1, 1998 (R. 104, 170, 244).

6. Statewide's business was grandfathered at the time of the annexation both by virtue of Statewide having acquired a proper business license from Salt Lake County prior to the annexation and by virtue of Statewide's legal operation of a home

business in an area zoned A-1, where such businesses were authorized (§ 10-9-408, Utah Code Annotated (1953 as amended), Addendum 1).

6. On July 2, 1999, representatives of South Salt Lake wrote a letter to Statewide (R. 10-11, 57-58, 120-121), alleging that:

a. At the time of annexation, the business was operating under a business license issued by Salt Lake County;

b. The City of South Salt Lake honored that license by allowing the bail-bonding office to continue as a nonconforming use, with the provision that it meet all building code requirements for a business;

c. The City had “discovered that the business license issued to [Statewide] by the county was in violation of the zoning regulations of the County and should NOT have been issued” and therefore the business did not have any legal nonconforming status;

d. The City would not issue “a new license” for the property but would allow a reasonable time for the operations to be relocated “before taking any steps to force complete cessation of operations”;

e. The City would allow operation for the remainder of the 1999 calendar year provided certain conditions were met;

f. Statewide needed to obtain an inspection of the property, make all necessary corrections, and cease all storage within thirty days or cease all operations and relocate within the same time frame;

g. Should Statewide wish to desire to continue with a request for a change in zoning, it needed to “finish the Community Council process and submit a petition to the Planning office, and, at the same time, request a review of the General Plan.”

7. The letter of July 2, 1999, did *not* state how Statewide’s business license issued by the County was in violation of the zoning regulations; it was *not* a denial of a current business license application; and it did *not* contain a notice to Statewide of the proper forum and time frame for appealing a denial of a business license (R. 10-11, 57-58, 120-121; Addendum 10).

8. Under § 5.02.170 of the ordinances of the City of South Salt Lake (4/98), the City was required to “cause written notice to be given *by personal service or registered mail* to the applicant or licensee” of the City’s decision to deny, suspend or revoke an application or license, and the notice *must* include the reasons for the denial, suspension or revocation and must include a description of the applicant’s or licensee’s right to appeal the decision of the business license official (Addendum 3).

9. The City admitted, in ¶ 6 of its “Statement of Facts” in its memorandum in support of its motion for summary judgment, that it notified Statewide

by means of the letter of July 2, 1999, that its “business license application” was denied (R. 105). This statement is misleading, but is an admission that this notice was *not* personally served upon Statewide *nor* was it sent by registered mail, *nor* did it contain a notice of Statewide’s rights to appeal and the time frame for such an appeal, so that the notice did not comply with the City’s own ordinances (R. 245, 10, 57, 120, Addenda 3, 10).

10. Prior to receipt of the City’s letter, in an attempt to legally be capable of storing vehicles and other items taken as collateral in the bail bonding business, Mr. Webber and Statewide applied (on June 2, 1999) for a rezoning of their property for commercial usage (R. 245, ¶ 14). This effort, however, was merely an additional effort to ensure complete compliance with South Salt Lake City’s desires, and had (and has) no effect upon the grandfathering of the license and the legal operation of the home business.

11. When Statewide’s rezoning application came before the City’s Planning Commission on October 19, 1999 (R. 127-129), in a genuine misrepresentation of actual facts a member of the planning staff advised the Commission that Statewide’s business license from Salt Lake County had been erroneously issued (contrary to the County’s own position (Addenda 4, 5, 6)); that the property surrounding the subject property was zoned agricultural (contrary to the light industrial zoning that actually exists east and south of the subject property (R. 326)); that the general plan called for the area to remain agricultural (constituting a spot zone of agricultural use in an area of rapidly

growing business, government, and light industrial usages); and that the planning staff recommended denial of the rezoning (contrary to the City's own inspector stating otherwise to Mr. Webber and admitting that the City needed to take a new look at the area (R. 246, ¶ 16).

12. Public comment at the hearing included a statement by one property owner that he had no objection to a change in the zoning of his property (which fronted on 900 West in likewise fashion as Statewide's property) so long as he was allowed to keep horses, and other comments included statements that the agricultural zone should remain where it actually exists, *behind* the buildings fronting 900 West. It was pointed out that the Sheriff's Office new substation was going to be built immediately south of the subject property (R. 127-128).

13. The Planning and Zoning Commission voted to recommend denial of the application on four grounds: (1) rezoning would not conform to the General Plan; (2) rezoning would amount to spot zoning; (3) the city should retain the remaining agricultural land in its boundaries as agricultural; and (4) two-thirds of the City contains other property zoned to permit a bail-bonding business (R. 128-129).

14. A public hearing on the rezoning application was held before the City Council on January 12, 2000, at which the same issues of maintaining the agricultural character of the area, conforming with the general plan, and spot zoning were discussed. The Council denied the rezoning application (R. 131-137).

15. Findings and Conclusions were prepared on January 20, 2000. The Findings failed to set forth the manner or details as to how the bail bonding business was illegal in an agricultural zone that allows home businesses, and did not address the matter of the proximity of the light industrial zone to Statewide's property (R. 140-141).

16. The Conclusions erroneously stated that the parcel is not adjacent to or contiguous with similar zoning (the areas immediately to the east and to the south are already light industrial, and the area one-half block north is commercial (R. 324, 326)); that the request is contrary to the current General Plan (more government buildings are going up in the contiguous area even now (R. 324, 326)); that changing the zoning in the area was premature (the Sheriff's Office is presently beginning construction of a new call center facility adjacent to Statewide's property and the City, by its own admission, has received requests from two other bail bonding facilities to locate in the area (R. 324, 326; 131-137)); and that the operation of a bail bond business from the subject location is illegal (it was previously approved by Salt Lake County as a home business and grandfathered as such at the time of the City's annexation of the property (Addenda 4, 5, and 6)).

17. The County's zoning ordinance provides in § 19.48.020 that a "home occupation" is among the "permitted uses" of A-1 Agricultural zone property. It does not define the meaning of "home occupation" (R.117, 287; Addendum 2).

SUMMARY OF ARGUMENT

Statewide's argument is three part. First, before the subject property was annexed into South Salt Lake City, it was subject to the zoning and business licensing regulations of Salt Lake County. The County issued Statewide a valid business license for the operation of a home-based bail-bonding business at its location directly across the street from the new Salt Lake County Detention Center. The County has verified, through letter, affidavit, and deposition, that Statewide's license was valid. Statewide's business was therefore grandfathered at the time it was annexed into South Salt Lake City.

Secondly, when the City decided to rescind or revoke Statewide's business license, it did not follow the procedures outlined in its own ordinances, in that the notice was not properly delivered, did not contain an official denial of the application, did not set forth explanations for the denial, and did not give notice of Statewide's right, methodology, and timing for appealing the City's denial of the license. The City's action was therefore invalid.

Lastly, the entire character of the area in which Statewide's business is located has changed dramatically over the period of the past five years, with the construction of a number of County and State facilities surrounding Statewide's property on three sides. On 900 West, only a small strip of five homes between 3300 South and Statewide's location at 3350 South remains non-commercial or non-light-industrial. The

other side of the street was already rezoned, and the west side of 900 West appears to be perhaps the *only* street in South Salt Lake City that does not have identical zoning designations on both sides of the street. The City's refusal to rezone this small area is unreasonable and irrational, and constitutes a reverse spot zoning of the area that is capricious, arbitrary, and illegal. It simply does not make sense in light of the land use in the local area.

ARGUMENT

POINT I. STATEWIDE OPERATED UNDER A VALID BUSINESS LICENSE ISSUED BY SALT LAKE COUNTY PRIOR TO THE CITY'S ANNEXATION OF THE PROPERTY.

The City's planning staff has claimed that Statewide had illegally obtained its business license from Salt Lake County. R. 120-121. However, the City has totally and completely failed to specify *how* or *in what manner* the license was obtained illegally. It has simply made a blanket statement, without providing reasons or pointing to ordinances or giving any evidence to back up that statement.

The City has totally failed to address the fact that Statewide legally and lawfully operated a home business in an A-1 zone, authorized under the zoning regulations of Salt Lake County (R. 238-241, 243; Add. 6), both prior to the annexation of the property by South Salt Lake City and at the present time. The County's regulations pertaining to A-1 agricultural zones clearly state that "home occupations" are permitted as

conditional uses in the A-1 zone. The ordinance does not define “home occupation”; it simply and unequivocally states, “home occupation.” Addendum 2.

The nature of Statewide’s business is quite plainly articulated in the name of the business, i.e., “Statewide Bail Bonds.” Statewide made no attempt to disguise the nature of the business--the County knew what type of business it was licensing when it issued the license. Addendum 9. Statewide deposed Russell Lawson, the Manager of Salt Lake County Public Works Department, Planning and Development Services Division, who testified the County checked its records and ordinances, determined the business was appropriate as a home occupation in its location, and issued a license for the operation of Statewide Bail Bonds at its present location. Addenda 4, 5, and 6.

At the time of this deposition, the City appeared to question the right of Mr. Lawson’s department to issue the conditional use permit. Addendum 6, p. 25. Mr. Lawson testified that it was the policy of the department to do so in circumstances such as those presented by Statewide. This appellate court recently reviewed a similar situation in the case of *Busche v. Salt Lake County*, 2001 UT App 111, 418 Utah Adv. Rep. 21 (Utah Ct. App. 2001), and specifically held that the Salt Lake County zoning ordinances, in the specific chapter governing the procedure for conditional use permit approval, authorized the planning commission to "delegate to the development services division director the authority to approve, modify or deny all or part of the conditional uses set forth in this title." *Citing*, Salt Lake County, Utah, Uniform Zoning Ordinance,

ch. 19.84.060. The City did not raise this point in its motion for summary judgment, but the case law appears to have made it moot, and lays to rest the City's claims that the license was obtained illegally.

Statewide's business therefore lawfully existed at the time of the annexation of the property, and thus it is grandfathered, pursuant to §10-9-408, Utah Code Annotated, which provides simply and straightforwardly: "(1) (a) Except as provided in this section, a nonconforming use or structure may be continued." Since none of the subsequent provisions of § 10-9-408 are applicable in this case, the continued use is appropriate. Addendum 1.

Statewide contends that the home occupation is *still* legal in the A-1 zone, as it exists and is defined in the ordinances of South Salt Lake City, so that it is actually *not* a nonconforming use, but whether or not the present business license authorities are in agreement as to the proper interpretation of the statute, the business's grandfathered status is recognized by law and has constitutional protections against "taking" by the City.

The Court of Appeals addressed a similar situation in the case of *Thomas S. "Steve" and Nancy C. Brown, et al., v. Sandy City Board of Adjustment, et al.* (957 P.2d 207 (Utah Ct. App. 1998)), wherein Sandy City's Community Development Staff began interpreting the Sandy City Code as prohibiting rental of any single-family dwelling for fewer than thirty days, although the Code defined only occupancy of the dwellings within the city, and not the duration of that occupancy. The appellate court affirmed that it must

construe existing zoning ordinances *strictly against the city*, and found that since short-term leases of residential properties were not prohibited by the zoning ordinance, they were permissible. Justice Bench added the comment that Sandy had taken the position that:

. . . every use of property is prohibited unless the use is specifically permitted by ordinance. That approach to zoning is diametrically opposed to the common law followed in Utah. *See, e.g., Patterson v. Utah County Board of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995) (stating zoning ordinances are to be strictly construed against the municipality because they are “in derogation of a property owner’s common law right to unrestricted use of his or her property”).

Id., at 213. Thus, short-term rentals were permitted in Sandy unless the city passed an ordinance to specifically prohibit them.

The situation herein is clearly analogous: Neither Salt Lake County nor the City of South Salt Lake presently prohibits bail-bonding companies from being operated within A-1 zones as “home occupations.” Addenda 2, 3. The South Salt Lake City zoning ordinance does not cover bonding companies anywhere (at least, it did not in 1999, although the ordinance may have been amended since the time of Statewide’s application). Bonding companies are not excluded in any zone; they are not listed as belonging in any zone. Absent such a prohibition, the statutes must be construed as *allowing* bail-bonding companies in A-1 zones. A review of the ordinances would suggest that bail-bonding companies would most appropriately be placed in light industrial zones, but they are not *inappropriate* in an A-1 zone.

A similar case came before the Utah Court of Appeals in 1999, wherein Woods Cross City argued that Hugoe Trucking's use of its property was never legally established, and therefore could not qualify as a legal nonconforming use. The appellate court disagreed, finding that when Hugoe purchased the property it was zoned so that a "transfer company" was included within a list of forty-nine permitted uses. The court noted:

Although transfer company is not defined in the ordinance, it is typically held to include "any company in the business of transporting freight or other products for hire." [Citation omitted.] Moreover, "because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed . . . in favor of the property owner." *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995). The trial court thus correctly determined that "Hugoe Trucking is a 'transfer company' within the meaning of [the city's] prior zoning ordinance." Hence, because transfer company is a permitted use under the former C-2 ordinance, appellees' use of the property "legally existed before its current zoning designation." Utah Code Ann. § 10-9-103(1)(l)(i) (Supp. 1999). Accordingly, appellees' use of the property meets the definition of nonconforming use, and the change from C-2 to I-1 does not affect their right to continue using the property just as they had before the zoning change.

Hugoe v. Woods Cross City, 988 P.2d 456, 458 (Utah Ct. App. 1999).

The instant case is again analogous: Statewide obtained a business license from Salt Lake County as a home occupation, a conditional use in an A-1 agricultural zone. No matter how South Salt Lake City may define a "home occupation," the granting of the license by the County conferred upon Statewide the status of "legally existing." If the City differs in its definition of "home occupation," it needs to legislate the meaning it

desires the term to convey, and thus change the meaning of the zoning ordinance, but Statewide will still then be entitled to continue as a valid nonconforming use.

POINT II. THE TRIAL COURT ERRED IN FINDING THAT THE PLAINTIFFS/APPELLANTS HAD FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES BY FAILING TO SEEK ADMINISTRATIVE REVIEW BY THE BUSINESS LICENSE HEARING BOARD OF CITY OF SOUTH SALT LAKE OF THE DENIED BUSINESS LICENSE APPLICATION.

The City presented little evidence in support of its claim that Statewide failed to exhaust its administrative remedies for denial of its business license application and that the trial court was therefore deprived of subject matter jurisdiction. The exhibits submitted by the City in support of this claim were:

- (1) Chapter 19.48.01 through .05 of the Salt Lake County Zoning Ordinance (Addendum 2);
- (2) The business license issued to Statewide by Salt Lake County (R. 119; Addendum 9);
- (3) The July 2, 1999, letter to Statewide from officials of the City (R. 120-121; Addendum 10); and
- (4) South Salt Lake City Ordinance § 5.02.190A (setting forth the methodology for appealing the denial, revoking, or rescinding of a business license) (Addendum 3).

Salt Lake County Zoning Ordinance, Chapter 19.48

Chapter 19.48 of the County's zoning regulations identify permitted and conditional uses in A-1 agricultural zones. Addendum 2. The regulations clearly include "home occupations" as conditional uses in the A-1 zone. The ordinance does not define "home occupation"; it simply and unequivocally states, "home occupation." Addendum 2.

The nature of Statewide's business is plainly articulated in the name of the business, i.e., "Statewide Bail Bonds." Statewide made no attempt to disguise the nature of the business--the County knew what type of business it was licensing when it issued the license. R. 119, 189. Prior to the oral argument on the parties' counter motions for summary judgment, Statewide deposed Russell Lawson, the Manager of the Salt Lake County Public Works Department, Planning and Development Services Division (see Addendum 6 for deposition transcript), who testified that on July 23, 1998, Ty Webber made application for a business license for Statewide Bail Bonds (Deposition, pp. 8, 9, 10, 12, 29, 32); the County checked the zoning map (*id.*, pp. 8, 21) , determined that under the zoning ordinance the business was appropriate as a home occupation in its location (*id.*, pp. 8. 17-18, 24-25), and issued approval for the authorized operation of Statewide Bail Bonds at its present location (*id.*, p. 9, 14-15). Mr. Lawson testified that no other procedures were required; that the business was not of a type that required application or appearance before a planning and zoning commission or other review

board and that it was the policy of the County that his department had the power to grant the permit and issue the license (*id.*, pp. 10, 16, 25-26); that his department followed normal procedures when it issued Statewide's license (*id.*, pp. 10, 16, 25-26, 30); and that the license was appropriately issued in the ordinary course of his department's operations (*id.*, pp. 16, 32-34). Mr. Lawson also testified that his department began using a new computer system in April of 1998 and that they had a lot of trouble with the new system, so that it was not until November 4 that the actual hard copy of the license was printed out (*id.*, pp. 13, 31, 32-33), but his department considered Statewide's business to be authorized and the business license to be effective as of July 23, 1998 (*id.*, pp. 11, 14, 15, 35-36).

The City has presented no evidence to contradict the testimony of Mr. Lawson; in fact, the City objected to Statewide's motion for continuance of the oral argument, which would have allowed the taking of other depositions, and insisted that the oral arguments proceed using the evidence then existing. R. 395-406. Mr. Lawson's uncontroverted testimony therefore stands: His department followed its usual policies and issued a business license to Statewide that had been in effect for one and one-half months before Statewide's property was annexed into the City.

As explained by Mr. Lawson, the Salt Lake County Zoning Ordinance supports and authorizes the issuance of Statewide's business license. At the very least this testimony presents a genuine issue of fact that precludes the entry of summary

judgment in this matter. At most, it establishes the grandfathered status of Statewide's business operation, which precludes the City's interference in the business. This item of evidence does not support the City's position.

The business license issued to Statewide by Salt Lake County

The actual printed copy of Statewide's business license bears the date of issuance of November 4, 1998 (Add. 9), which would appear to support the City's claims that it was illegally issued. However, the testimony provided by Russell Lawson by letter (Addendum 4), by affidavit (Addendum 5), and finally in his deposition (Addendum 6), explains that the printed date bore no relationship to the date on which the business application was actually approved. To the contrary, all the other evidence explains that the November 4 date only appeared because of problems with a new computer program.

The other information appearing on the face of the license shows that Ty Webber revealed that he wished to operate a bail-bonding business at his home location, and that the business was a "mail and phone" home occupation, approved by the County Zoning Department. The business license therefore gives no support to the City's claims.

The July 2, 1999, letter to Statewide from the City

This letter actually supports Statewide's position, not the City's. In this letter (Add. 10), the City states that the business license issued by the County was "in violation of the zoning regulations of the County and should NOT have been issued" and

that an “A-1 zone . . . does NOT allow business of your type (the same as the County).”

These statements are unsubstantiated and without foundation, and were repudiated by the letter, affidavit, and deposition testimony of Russell Lawson.

Of more importance, however, this letter does not follow the requirements set forth in the City’s own ordinances regarding denial, rescinding, or revoking of a business license. South Salt Lake City ordinance § 5.02.170 (Addendum 3) states:

Upon a denial, suspension or revocation of a business license application or business license, the business license official shall cause written notice to be given *by personal service or registered mail* to the applicant or licensee of his or her decision to deny, suspend or revoke an application or license. Such notice *shall* include the reasons for the denial, suspension or revocation of such application or license, and *shall* include any accompanying documentation relating to the business license official’s decision to deny, revoke or suspend an application or business license. Such notice *shall* also include a description, if applicable, of the applicant’s or licensee’s right to appeal the decision of the business license official. (Italics added.)

This letter from South Salt Lake City to Statewide effectively gave Statewide a conditional license, good through December 31, 1999, subject only to conditions set forth on an inspection report. Addendum 10. There was no official denial of Statewide’s application, no statement that the license was being suspended or revoked, and no notice of a right to appeal the decision. This letter did *not* state how Statewide’s business license issued by the County was in violation of the zoning regulations; it was *not* a denial of a current business license application; and it did *not* contain a notice to Statewide of the proper forum for appealing a denial of a business license.

Furthermore, the City has made a *de facto* admission in its “Statement of Facts” of its memorandum in support of its motion for summary judgment (R. 105), that this notice was *not* personally served upon Statewide, *nor* was it sent by registered mail, *nor* did it contain a notice of Statewide’s right to appeal and the timing and methodology for taking such an appeal, so that the notice did not comply with the City’s own ordinances. R. 245, ¶ 12.

Violation of the City’s ordinance makes its decision illegal under § 10-9-1001 (Utah Code Annotated) and as interpreted in the *Springville Citizens* case (*loc. cit.*). In another recent zoning case, *Hatch v. Boulder Town Council* (2001, UT App 55, 415 Utah Adv, Rep. 11 (Utah Ct. App. 2001)), this appellate court held that when the Town of Boulder failed to “comply strictly” with the statutory requirements in enacting its zoning ordinance, its ordinance was invalid. By the same reasoning, when the City of South Salt Lake failed to “comply strictly” with its business license ordinance, its denial of a business license was invalid. The City’s notice was defective in its manner of service and in its content, making the notice invalid and precluding the City from prevailing on this point.

POINT III. THE CITY'S DENIAL OF THE REZONE APPLICATION WAS ARBITRARY, CAPRICIOUS, AND CONDONED AN ILLEGAL REVERSE SPOT ZONE OF THE AREA IN WHICH APPELLANTS' PROPERTY IS SITUATED.

The entire area around Statewide's property is commercial or light industrial. R. 362; 247, ¶ 20. Directly across the street to the east and south is the County's new adult detention center, the County's new "call center," and a new Sheriff's substation, all authorized as conditional public uses in the A-1 zone. Also located in the area are a Youth Detention Center, and two facilities used by the Utah Transit Authority. These new facilities are most compatible within a light industrial zone, and the zoning of the area has been modified to reflect that, including the area on the east side of 900 West, across the street from Statewide's property.

In an oversight, perhaps, but as a major inconsistency with its previous practices, the County did not include the west side of 900 West in the new light industrial zone. A review of the zoning map (R. 326) reveals that virtually every other street in the South Salt Lake City area that is presently zoned for business or industrial use includes such a designation for *both* sides of the street. The west side of 900 West appears to be perhaps the *only* exception to this practice. However, this is not the only example of the arbitrary, capricious nature of the City's decision to deny Statewide's rezoning application.

The Planning and Zoning Commission voted to recommend denial (R. 128) of the application on four grounds: (1) rezoning would not conform to the General Plan (although the area is surrounded on three sides by light industrial and business zones (R. 247, ¶ 20; 326)); (2) rezoning would amount to spot zoning (although it is actually the small patch of agricultural property in the midst of a sea of business and industrial usages that constitutes the spot zoning (R. 324)); (3) the city should retain the remaining agricultural land in its boundaries as agricultural (although none of the property located along 900 West is presently being used as agricultural land (R. 324), the typical zoning in the City includes the properties lining both sides of the City's streets (R. 326)--so that only the property actually located directly behind Statewide's property is actual agricultural in nature, which would not be affected by Statewide's request for rezoning of the frontage property); and (4) two-thirds of the City contains other property zoned to permit a bail-bonding business (ignoring the fact that the County's new adult detention center is located directly across the street from Statewide's property (R. 324) and it is to the public's general good that bail bonding businesses be proximate to detention facilities).

Since Salt Lake County built a correctional facility in the area, relocated other law-enforcement activities in the area, and issued a license to Statewide's bail-bonding company, the character of that area was clearly envisioned by the County to be appropriate for bail-bonding activities and, accordingly, subject to rezoning to permit the

same, all of which gives rise to an arguable position that the City's position should be (or might ought to be) the same. The very fact that the City's position is *not* the same provides *prima facie* evidence that its decision was not based upon the evidence of the actual usage of the area, with an eye to the ongoing development and future expansion of the County's facilities, with appropriate accessory activities, so that the City's position was clearly not based upon the evidence.

Although the City is entitled to use its discretion in its choice of land use, it is *not* entitled to infringe upon the rights of citizens who made life-affecting decisions based upon the County's avowed position. The City's discretion must be reasonably related to serving the public health, safety or general welfare. "If a land use restriction is unreasonable or irrational, it may be found to violate the substantive component of the due process clause." 1 Kenneth H. Young, *Anderson's American Law of Zoning*, § 3A.04 (4th ed. 1996), as cited in *Smith Investment Company v. Sandy City*, 958 P.2d 245 (Utah Ct. App. 1998). Since the **County** (with its century-long jurisdiction over the area, its studies finding the area to be the proper situs for the detention facilities and other correctional activities, and its verbal encouragement to bail-bonding companies to relocate nearby) found Statewide's use of its property as a bail-bonding company to be reasonable and rational, the City's countermanding of the County must be seen as unreasonable and irrational or, in other words, arbitrary and capricious.

The City refers to opposition of owners of agricultural property in the area, but fails to distinguish between those property owners residing along 900 West--contiguous to the light industrial zone--and those along 1000 West who are the *only* persons actually engaging in agricultural activities in the neighborhood. Even if the 900 West residents opposed the zoning change (which they did not), a property owner

has no vested right to “continuity of zoning. . . .” A person who purchases land in reliance upon its current zoning restrictions acquires no right that the restrictions remain the same.

Young, *op cit.*, § 4.28, at 325, 327 (4th ed. 1996), as cited in *Smith, loc. cit.*

As stated above, this area is clearly one whose character has materially changed and was materially changed prior to its annexation by South Salt Lake, with the huge building activity that is ongoing even to date, and to not have the area zoned in conformity with the reality of what exists (but rather to create an arbitrary zone, ignoring the *reality* of what exists) is again spot zoning and constitutes an arbitrary and capricious decision.

The City rightly stated in its memorandum the holding in *Crestview-Holladay Homeowners Ass’n, Inc. v. Engh Floral Co.*, (545 P.2d 1150, 1151 (Utah 1976)), that spot zoning consists of a smaller area being singled out of a larger area and specially zoned for a classification totally different from that of the surrounding land. What the City has ignored, however, is that the surrounding land on three sides *is* commercial or light industrial in usage (R. 324, 326), and is presently becoming even

more developed, so that leaving the west side of 900 West with an agricultural designation is causing the actual spot zoning. It is *not* Statewide's property that is the incongruity; it is the small strip of five houses along the west side of 900 West that stand out as the last vestige of an older agrarian use that has ceased to exist along that street--a *spot* of former agricultural use in a *sea* of commerce.

Additionally, the City's denial of the zoning request also did not properly consider the general welfare of the residents of the area: Prisoners are let out of the detention center at all hours of the day and night, being left to walk up and down the street. Such a situation is better for a commercial establishment than for homeowners, even Ty Webber is both. From the concept of protecting a family, bonded prisoners would be better not walking through a neighborhood of homeowners but through a neighborhood of bail bondsmen.

Another aspect of the public's general welfare concerns the constitutional entitlement of arrestees to be released from incarceration through the posting of bond. It is appropriate for this bonding/bailing activity to take place proximate to the jail (as was clearly evidenced by the location of bonding businesses near the old Salt Lake County Jail in downtown Salt Lake City), and it is obviously more convenient for family members or other interested parties to be able to make bail arrangements in facilities located close to the detention center.

CONCLUSION

Salt Lake County acknowledged the operation of Statewide's business as appropriate, proper, and legal in its present location, and its approval gave Statewide a grandfathered status. For the City to decide otherwise is arbitrary and capricious, and its manner of conveying its decision was illegal and did not conform to its own statutes, making the decision invalid.

DATED this 3 day of August, 2001.



WILLIAM B. PARSONS III
Attorney for Appellants

CERTIFICATE OF DELIVERY

I hereby certify that I served a copy of the foregoing BRIEF OF APPELLANT by depositing a true and correct copy thereof in the United States mails, postage prepaid, addressed to:

H. Craig Hall
South Salt Lake City Attorney
220 East Morris Avenue
South Salt Lake City, UT 84115

Dennis C. Ferguson
P.O. Box 45678
Salt Lake City, UT 84145-5678

on this 6 day of August, 2001.

Wm. B. Pearson

ADDENDA

ADDENDUM 1

§ 10-9-408, Utah Code Annotated

§ 10-9-408, Utah Code Annotated

10-9-408. Nonconforming uses and structures.

(1) (a) Except as provided in this section, a nonconforming use or structure may be continued.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this subsection, the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide in any zoning ordinance or amendment for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the zoning ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a billboard that is a nonconforming use by acquiring the billboard and associated property rights through:

- (i) gift;
- (ii) purchase;
- (iii) agreement;
- (iv) exchange; or
- (v) eminent domain.

(3) If a municipality prevents a billboard company from maintaining, repairing, or restoring a billboard structure damaged by casualty, act of God, or vandalism, the municipality's actions constitute initiation of acquisition by eminent domain under Subsection (2)(c)(v).

(4) Notwithstanding Subsections (2) and (3), a legislative body may remove a billboard without providing compensation if, after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the legislative body finds that:

- (a) the applicant for a permit intentionally made a false or misleading statement in his application;
- (b) the billboard is unsafe;
- (c) the billboard is in an unreasonable state of repair; or
- (d) the billboard has been abandoned for at least 12 months.

(5) A municipality may terminate the nonconforming status of school district property when the property ceases to be used for school district purposes.

ADDENDUM 2

§ 19.48.010, *et seq.*, Salt Lake County Zoning Ordinance

Chapter 19.48

A-1 AGRICULTURAL ZONE

Sections:

19.48.010	Purpose of provisions.
19.48.020	Permitted uses.
19.48.030	Conditional uses.
19.48.040	Lot area.
19.48.050	Lot width.
19.48.060	Front yard.
19.48.070	Side yard.
19.48.080	Rear yard.
19.48.090	Building height.

19.48.010 Purpose of provisions.

The purpose of the A-1 zone is to provide areas in the county for low-density residential development, together with limited agricultural uses. (Prior code § 22-23-1)

19.48.020 Permitted uses.

Permitted uses in the A-1 zone include:

- Accessory uses and buildings customarily incidental to permitted uses;
 - Agriculture;
 - Animals and fowl for family food production;
 - Apiary;
 - Aviary;
 - Farm devoted to the raising and marketing, on a commercial scale, of chickens, turkeys or other fowl or poultry, rabbits, chinchilla, beaver, nutria, fish or frogs;
 - Home day care/preschool, subject to Section 19.04.293;
 - Household pets;
 - Raising and grazing of horses, cattle, sheep or goats, provided that such raising or grazing is not a part of, nor conducted in conjunction with, any livestock feedyard, livestock sales yard, animal byproduct business, or commercial riding academy;
 - Residential facility for elderly persons;
 - Single-family dwelling;
 - Worm farming (minimum lot area one acre).
- (Ord. 1200 § 5 (part), 1992; Ord. 1179 § 5 (part),

1992; 1986 Recodification; § 1 (part) of Ord. passed 2/1/84; prior code § 22-23-2)

19.48.030 Conditional uses.

Conditional uses in the A-1 zone include:

- Airport;
- Bed and breakfast homestay;
- Campgrounds;
- Cemetery;
- Day care/preschool center, subject to Section 19.76.260 of this title;
- Dwelling group.

A. The parcel of ground on which the dwelling group, as defined in Section 19.04.190 of this title, is to be erected shall have an area equal to the aggregate of the minimum lot areas otherwise required in the zone for the number of individual dwelling structures in the group.

B. The distance between the principal buildings shall be equal to the total side yards required in the zone; provided, however, that at the option of the developer, the distance between the principal structures may be reduced to ten feet, provided that the difference between ten feet and the required side yards is maintained as permanently landscaped open space elsewhere on the site. The distance between principal buildings and the nearest perimeter lot line shall not be less than fifteen feet unless demonstrated by the development plan that the yard required for a principal building in the district in which located is more appropriate. The distance between the building and a public street shall be not less than the front yard required in the zoning district, except for corner lots the side yard which faces on a public street shall be not less than twenty feet.

C. Access shall be provided by a private street or right-of-way from a public street; the private street or right-of-way shall not be less than twenty feet wide for one or two rear dwelling units and not less than thirty feet wide for three or more dwelling units.

D. A minimum of two parking spaces shall be provided for each dwelling unit. Parking spaces and vehicular maneuvering areas shall be designed to comply with county standards.

E. Every dwelling in the dwelling group shall be within sixty feet of an access roadway or drive.

F. The development plan shall provide a buffer landscaped area along all property lines and decorative landscaping adjacent to the buildings in appropriate locations. Solid visual barrier fences shall be provided along all property lines unless the planning commission approves otherwise by deleting or modifying the fence requirement.

G. The development shall be approved by the development services director and the county fire chief before final approval is given by the planning commission.

- Fruit and/or vegetable stand, provided that the products are produced on the premises;

- Golf course;

- Home day care/preschool, subject to Section 19.04.293;

- Home occupation;

- Milk processing and sale, provided that at least fifty percent of the milk processed or sold is produced on the premises;

- Nursery and/or greenhouse, excluding retail sales;

- Nursing home;

- Pigeons, subject to city-county health department health regulations;

- Planned unit development;

- Plant for storage or packing of fruit or vegetables produced on the premises;

- Private educational institution having an academic curriculum similar to that ordinarily given in public schools;

- Private nonprofit recreational grounds and facilities;

- Public and quasi-public uses;

- Radio and television transmitting and relay station and tower, excluding business office or studio, except such control room studio facilities as required for emergency broadcasts in the event of a national or local disaster;

- Residential health care facility for up to five residents on streets less than eighty feet in width, and up to ten residents on street eighty feet and wider, excluding the facility operator and his/her

related family with a maximum of one nonresident part-time relief employee on the premises at any one time unless additional staffing is required by the Utah Department of Health, which use shall not change the residential appearance and character of the property;

- Sportsman's kennel (minimum lot area one acre);

- Temporary buildings for uses incidental to construction work, which buildings must be removed upon completion or abandonment of the construction work. If such buildings are not removed within ninety days upon completion of construction and thirty days after notice, the buildings will be removed by the county at the expense of the owner;

- Two-family dwelling. (Ord. 1338 § 2 (part), 1996; Ord. 1198 § 8 (part), 1992; Ord. 1179 § 6 (part), 1992; Ord. 1170 §§ 2 (part), 3 (part), 1991; Ord. 1118 § 5 (part), 1990; Ord. 1088 § 5 (part), 1989; (part) of Ord. passed 12/15/82; Ord. passed 11/17/82; prior code § 22-23-3)

19.48.040 Lot area.

In the A-1 zone, the minimum lot area for any dwelling, school, church, greenhouse, aviary or apiary, or for the keeping of animals and fowl for family food production, shall be ten thousand square feet. The minimum lot area for any fowl, poultry, rabbit, fish, chinchilla, beaver, nutria or frog farm, or for raising or grazing horses, cattle, sheep or goats (except as permitted for family food production), or for packing or storage plants, shall be one acre. The minimum lot area for radio and television transmitting and relay stations and towers shall be four acres or more, such additional area to be sufficient to permit the placement of towers in such a manner that side clearance in every direction from each and every tower shall be equal to or greater than the height of the tower. (Prior code § 22-23-4)

19.48.050 Lot width.

In the A-1 zone, the minimum width of any lot which is required by this chapter to contain a minimum area of ten thousand square feet shall be

sixty-five feet. The minimum width of any lot which is required by this chapter to contain a minimum area of one acre shall be one hundred feet. The minimum width of any lot which is required by this

ADDENDUM 3

§ 5.02.170, South Salt Lake City Ordinances

C. The business license official shall have the authority, on his or her own initiative, or in response to complaints from the public or any city departments, to investigate and gather evidence of violations of this code, or other circumstances which may give rise to a denial, suspension or revocation. Upon a finding that the business license application, or business license, may be denied, suspended or revoked for the reasons set forth above, the business license official may deny, suspend, or revoke such application or license. (Ord. 97-23 § 1 (Att. A (part)))

5.02.170 Notice of denial, suspension or revocation.

Upon a denial, suspension or revocation of a business license application or business license, the business license official shall cause written notice to be given by personal service or registered mail to the applicant or licensee of his or her decision to deny, suspend or revoke an application or license. Such notice shall include the reasons for the denial, suspension or revocation of such application or license, and shall include any accompanying documentation relating to the business license official's decision to deny, revoke or suspend an application or business license. Such notice shall also include a description, if applicable, of the applicant's or licensee's right to appeal the decision of the business license official. (Ord. 97-23 § 1 (Att. A (part)))

5.02.180 Business license hearing board.

There is created a business license hearing board of the city of South Salt Lake which shall consist of three members, and such alternates as deemed appropriate, appointed by the mayor, with the advice and consent of the city council. The board shall consist of one member of the city council, one resident of the city of South Salt Lake, and one holder of a business license, or one having substantial interest in a business license issued by the city of South Salt Lake, who is not a party to an appeal. Members of the South Salt Lake business license hearing board shall be appointed for two-year terms or until their successors are appointed, and shall

serve without compensation. Upon an initial appointment by the mayor, with the advice and consent of the city council, one board member, as directed by the mayor, shall serve for a one-year term. Thereafter, each appointment shall be for two years for each member of the board. The business license hearing board shall have the authority to hear evidence and business license matters referred to the board, and after such hearing, shall submit its recommendations in writing to the office of the mayor. The mayor shall designate one member of the board to be chairman and one member of the board to be vice chairman for a period of one year. (Ord. 97-23 § 1 (Att. A (part)))

5.02.190 Procedures for appeal.

A. A person may appeal a decision of the business license official to deny, suspend or revoke a business license by filing written notice of appeal, directed to the business license hearing board, and filed with the city recorder, within ten working days of the date of the business license official's notice to deny, suspend or revoke the business license application or business license.

B. The notice of appeal shall be in writing, and shall set forth specifically the grounds and reasons why the business license application or business license should not be denied, suspended or revoked. (Ord. 97-23 § 1 (Att. A (part)))

5.02.200 Business license hearing.

A. The hearing shall be a time, place and date set by the business license hearing board, but not later than ten working days following receipt of the applicant's or licensee's notice of appeal.

B. The business license official, or his or her representative or attorney, shall first present any evidence upon which the business license official's decision to deny, suspend or revoke an applicant's or licensee's application or business license was based.

1. The applicant or licensee, in person or through his or her attorney, may then present any evidence which shows the business license official's decision was in error.

2. All witnesses shall be sworn to testify truthfully, and either party is entitled to confront and cross examine any witnesses.

3. All evidence shall be recorded by a certified court reporter and constitute a record of proceedings of the business license hearing board.

C. The laws and ordinances of the city of South Salt Lake, the state of Utah and the United States shall in all appeals be controlling. The business license hearing board shall not make any findings which would result in the violation of, or continuing violation of, any of the above laws and ordinances. The business license hearing board shall not have the authority to waive compliance with any of the applicable provisions of the business license ordinance, nor can the business license hearing board extend deadlines set forth in such ordinances or change the substance or form of such ordinances. (Ord. 97-23 § 1 (Att. A (part)))

02.210 Business license hearing board decision.

The business license hearing board, after receiving all evidence presented by all parties, shall render decision to either uphold the denial, revocation or suspension of a business license application or business license within seven days from the date of such hearing. Such decision shall be in writing, and shall include the findings of fact and conclusions by the business license hearing board. The business license hearing board may direct a prevailing party to draft such findings of fact and conclusions, and also require an order to accompany such findings of fact and conclusions. (Ord. 97-23 § 1 (Att. A (part)))

02.220 Appeal of business license hearing board decision.

Any decision of the business license hearing board may be appealed by the applicant, licensee or the city to the third district court within thirty (30) days from the date the business license hearing board submits its written decision. (Ord. 97-23 § 1 (Att. A (part)))

5.02.230 Unlawful to engage in business after revocation.

If any license shall be revoked or application for license be denied as provided in this title, it shall thereafter be unlawful for any person to open, operate, maintain, manage or conduct any business, trade, profession or calling for which a license is required at the premises where the license was revoked or denied until a new license shall be granted by the city. (Ord. 97-23 § 1 (Att. A (part)))

5.02.240 Issuance of new license after denial or revocation—Waiting period.

No person who has been denied a license or whose license has been revoked, and no person associated or connected with such a person in the conduct of his business, shall be granted a new license until a period of six months after such denial or revocation has elapsed except with approval of the business license official. (Ord. 97-23 § 1 (Att. A (part)))

5.02.250 Subject to general licensing provisions.

The licenses required in the consolidated fee schedule are specifically subject to all of the general licensing provisions as set forth in this title. (Ord. 97-23 § 1 (Att. A (part)))

5.02.260 Fees required not additional.

The fees required under this chapter are not in addition to other fees required in this title; only one license is required for each business, except as set forth in Section 5.02.020 providing for late penalties on all licenses. It is realized that many of the businesses paying a license under this chapter are controlled and regulated by the state of Utah and Salt Lake County, and insofar as the state and the county require additional licenses or inspection fees, the fees required hereunder are in addition to such fees and are not in lieu thereof. (Ord. 97-23 § 1 (Att. A (part)))

ADDENDUM 4

Letter of Russell Lawson, dated February 29, 2000

**Salt Lake County Public Works Department
Planning and Development Services Division**

Mary Callaghan, *Commissioner*

J. D. Johnson, *Department Director*

Calvin K. Schneller, A.I.C.P., *Division Director*



SALT LAKE COUNTY
GOVERNMENT CENTER
2001 S. State Street
Suite N3600
Salt Lake City
Utah 84190-4200
Tel (801) 468-2000
Fax (801) 468-2169

February 29, 2000

To Whom it May Concern:

The business license for Statewide Bail Bonds became effective on July 23, 1998.

The business license was not printed until November 4, 1998 due to problems incurred during converting from one computer program to another. As far as Salt Lake County is concerned, Statewide Bail Bonds was legally conducting business in Salt lake county in July, 1998.

If you have any further questions, please contact our office.

RUSSELL LAWSON, MANAGER

ADDENDUM 5

Affidavit of Russell Lawson, dated May 5, 2000

RANDALL T. GAITHER (#1141)
321 South 600 East
Salt Lake City, UT 84121
Telephone: (801) 531-1990

WILLIAM B. PARSONS III (#2535)
440 East 3300 South
Salt Lake City, Utah 84115
Telephone: (801) 466-6311

ATTORNEYS FOR PLAINTIFF

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

TY WEBBER and STATEWIDE,)	
BAIL BONDS)	AFFIDAVIT OF RUSSELL LAWSON
Plaintiff,)	
)	
-v-)	
)	
CITY OF SOUTH SALT LAKE,)	Case No 000901508
)	
Defendant.)	Hon William B Bohling

The undersigned, Russell Lawson, being first duly sworn upon oath states as follows:

1 I am the Manager of the Salt Lake County Public Works Department, Planning and Development Services Division, located at 2001 South State Street, Suite N-3600, Salt Lake City, Utah.

2. I am personally aware of the facts in relation to the application of Statewide Bail Bonds for a business license at the location of 3350 South 900 West, South Salt Lake City, Utah(account number 37430).

3. When the application for the business license was received at Salt Lake County, the application as part of the standard procedure was submitted to the Zoning Department and Zoning checked the application and the license and business use set forth in the license was approved for Statewide Bail Bonds at the above referenced address under Salt Lake County Zoning regulations.

4. If the business use did not comply with the zoning for the real property, then Zoning would have not approved the business license at the site. Therefore under Salt Lake County's interpretation of the zoning ordinances that existed in July 1998, the business use of Statewide Bail Bonds was a lawful use which Salt Lake County specifically approved.

5. After annexation all the original files including the application and all business licenses were forwarded to South Salt Lake City in order that they would be aware of the licenses that had been issued by the County.

6. I am aware of other annexations in Salt Lake County by other cities such as Taylorsville, and after annexations, the licenses from the County have been honored by the new municipality.

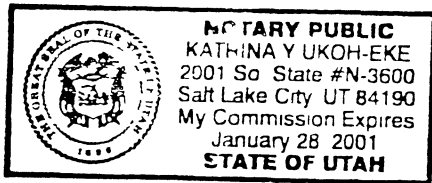
DATED this 5th day of May, 2000.




RUSSELL LAWSON

State of Utah)
 :SS
County of Salt Lake)

On the 5th day of May, 2000, personally appeared before me Russell Lawson
who having read the foregoing Affidavit, swears that the contents thereof are true
according to the best of information and belief and has executed the same.



Notary Seal:



Notary Public

ADDENDUM 6

**Condensed Transcript/Index of Deposition of
Russell Lawson, dated September 15, 2000**

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

TY WEBBER AND STATEWIDE)	
BAIL BONDS,)	<u>CONDENSED TRANSCRIPT/INDEX</u>
)	
PLAINTIFF,)	
)	
VS.)	CASE NO. 000901508
)	
CITY OF SOUTH SALT LAKE,)	
)	
DEFENDANTS.)	
_____)	

DEPOSITION OF RUSSELL L. LAWSON

TAKEN: SEPTEMBER 15, 2000

INTERMOUNTAIN COURT REPORTERS
5980 South Fashion Blvd.
Murray, Utah 84107
263-1396

File No. 91500

REPORTED BY:
KELLY SOMMERVILLE, RPR

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Deposition of RUSSELL L. LAWSON, taken on behalf of Plaintiff, at the law offices of WILLIAMS & HUNT, 257 East 200 South, Suite 500, Salt Lake City, Utah, on September 15, 2000, commencing at 8:30 a.m., before KELLY SOMMERVILLE, Registered Professional Reporter and Notary Public in and for the State of Utah, pursuant to Notice.

APPEARANCES:

FOR THE PLAINTIFF: BY: WILLIAM B. PARSONS III, ESQ.
440 East 3300 South
Salt Lake City, Utah 84115

FOR THE DEFENDANT: BY: H. CRAIG HALL, ESQ.
SOUTH SALT LAKE CITY ATTORNEY
220 East Morris Avenue, #200
South Salt Lake City, Utah 84115

WILLIAMS & HUNT
BY: DENNIS C. FERGUSON, ESQ.
257 East 200 South, Suite 500
Salt Lake City, Utah 84111

FOR MR. LAWSON: BY: RENA BECKSTEAD, ESQ.
DEPUTY SALT LAKE DISTRICT ATTORNEY
2001 South State Street
Salt Lake City, Utah 84190

ALSO PRESENT: TY WEBBER

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I N D E X

WITNESS	EXAMINATION BY	PAGE
Russell Lawson	Mr. Parsons	4
	Mr. Hall	24
	Mr. Parsons	39

EXHIBITS:

No. 1 Affidavit	6
No. 2 SV-MISC Licence Application	12
No. 3 Business Card for Linda Kingsley	16
No. 4 Salt Lake County Zoning Ordinance	17
No. 5 Business License	18
No. 6 Letter Dated 2/29/00	20
No. 7 Salt Lake County Zoning Map	21
No. 8 Salt Lake County Business License Application	26

Page

Salt Lake City, Utah, September 15, 2000, 8:30 a.m.

BY MR. PARSONS:

Q. Mr. Lawson, I'm the attorney for Mr. Webber here, and we have an action pending against South Salt Lake relative to a zoning issue. It doesn't involve Salt Lake County, other than the fact that it used to be property that was in Salt Lake County. And you may or may not have some knowledge that would be relevant to my litigation, so I've asked to be able to interview you this morning.

A. Okay.

Q. In this deposition, the young lady to my right will take your responses down. She does that by keying this machine and she can't do that very well if I speak over the top of you or if you answer a question before I'm through asking it, so we'll try hard, I hope, to stay away from one another's words.

A. Okay.

Q. If you have a question about anything that I'm asking you at any point during the course of the deposition, don't hesitate to ask me. I have a bad habit of asking awkward questions, so if I do that, just let me know and I'll rephrase the question. If you need to speak to your counsel or you need to take a break or if there are any problems at any point in time, I have

no objection. That's perfectly okay with me.

The record is something I will be using during the course of my proceedings so it's very important I have a clear record. Accordingly, I would ask you not nod your head one way or the other, but say yes or no if those answers are appropriate and speak loud because I'm getting old and I'm hard of hearing. Now, that's about all that I have. Do you have any questions?

A. No questions.

Q. Great. Now, Mr. Lawson, I need to have you raise your right hand and be sworn in.

(Whereupon witness was sworn.)

RUSSELL L. LAWSON,
having been duly sworn, was
examined and testified as follows:

BY MR. PARSONS:

Q. Mr. Lawson, would you please tell me your full name?

A. Russell L. Lawson.

Q. The middle initial was what?

A. Lee.

Q. Mr. Lawson, what is your business address, sir?

A. 2001 South State Street, Suite N3600.

Q. N3600. Okay. And your business telephone

1 A. 468-2174.
 2 Q. For whom do you work, sir?
 3 A. Salt Lake County Development Services.
 4 Q. And is that part of the Public Works
 5 Department?
 6 A. It is.
 7 Q. What is your position there?
 8 A. I'm a business license manager.
 9 (Exhibit No. 1 was marked for identification.)
 10 BY MR. PARSONS:
 11 Q. Mr. Lawson, I want you to look at what has been
 12 marked as Exhibit No. 1 to this deposition, and ask if
 13 you can identify that document?
 14 MR. FERGUSON: What is Exhibit 1, Brad?
 15 MR. PARSONS: The affidavit of Russell Lawson.
 16 MR. FERGUSON: Okay.
 17 THE WITNESS: I recognize it, yes.
 18 BY MR. PARSONS:
 19 Q. Is that your signature on the second page, sir?
 20 A. It is.
 21 Q. Did you read and understand the contents of
 22 Exhibit 1 before signing the same?
 23 A. I understood them.
 24 Q. And are the representations contained in
 25 Exhibit 1 true and accurate to the best of your

1 knowledge?
 2 A. It's true.
 3 Q. Exhibit 1 speaks in terms of an application for
 4 a business license for Statewide Bail Bonds at a
 5 location of 3350 South 900 West in what was at the time
 6 of the application Salt Lake County. Do you recall any
 7 of the events surrounding that?
 8 A. Other than just it come across my desk, that's
 9 about it.
 10 Q. Okay. There's an account No. 37430 in
 11 reference to paragraph 2 of the affidavit. What does
 12 that account number refer to?
 13 A. That referred to the business license account
 14 we assign once it's finished.
 15 Q. Is that a number you participate in assigning
 16 or someone on your staff?
 17 A. Someone on my staff.
 18 Q. Very well. Does that account number refer to
 19 in fact Statewide Bail Bonds?
 20 A. It does.
 21 Q. Have you reviewed that to determine that that
 22 account number is accurately the one that pertains to
 23 Statewide Bail Bond?
 24 A. At the time it was assigned to Salt Lake County
 25 it was.

1 Q. Can you tell me when that account number was
 2 assigned?
 3 A. July 23, 1998.
 4 Q. What is the procedure, if you'd be so kind,
 5 explain that to me, sir, when a person seeks to have a
 6 business license acquired.
 7 A. Well, in this case, with this particular
 8 business, they come into the County, ask to apply for a
 9 business license. We ask them what is the location that
 10 they gonna do their business in. We in fact check our
 11 maps to make sure they're in the county. Once we find
 12 out they're in the county and what zone it is, we ask
 13 them what they are planning on doing, and they tell us
 14 what they are planning on doing and it may need a
 15 conditional use or we can sign off on it.
 16 In this particular case, it was in an A1 zone. He
 17 wanted to be doing a bail bond business with no
 18 customers or employees coming to the home. So,
 19 therefore, we gave him a business license application, a
 20 phone and mail permit, which he said, and filled both of
 21 them out, the business license application is just a
 22 standard application. He put down his business, the
 23 date he wanted to start operating it, the location of
 24 it, any employees and stuff like that, d/b/a, owner's
 25 name, owner's address and etc. He filled that out and

1 he signed that.
 2 The phone and mail application that he filled out
 3 was basically -- I've got a copy of that. It's this
 4 application. It would state that the business is
 5 conducted in the home by a phone and/or mail. We asked
 6 him, Was it his home? He said it was, so, therefore,
 7 with a phone and mail -- with a phone and mail, there is
 8 no customer or employees coming to the home. No
 9 vehicles, except the resident's own personal vehicle
 10 transportation, equipment or merchandise stock, no
 11 equipment or anything like that kept on the property.
 12 The only thing that can really be maintained on a phone
 13 and mail is just a desk, drafting table, home computer,
 14 answering service device, fax machine, and printer. And
 15 only the person residing in the home can be involved in
 16 the business and no accessory buildings can be involved
 17 on this permit.
 18 If they abide by those rules, we have them sign this
 19 application, zoning approve it, and then he brings it
 20 back to us. We receipt it and issue him a receipt to
 21 operate -- start operating his business.
 22 Q. In the instance of Statewide Bail Bonds, do you
 23 know the date that the application was made?
 24 A. Date the application was made was July 23,
 25 1998. The date that they fill out the application and

Page 10	Page 1
<p>1 give it to us is the date that we enter into the</p> <p>2 computer and that's the date we assign it as being a</p> <p>3 current license</p> <p>4 Q And so may I presume that on July 23 of 1998, a</p> <p>5 business license application was made by Statewide Bail</p> <p>6 Bonds to Salt Lake County?</p> <p>7 A Correct</p> <p>8 Q When was that approved?</p> <p>9 A Normally we can staff approve licenses right</p> <p>10 then and there As long as he agreed to abide by these</p> <p>11 rule, the staff approves them Once we issue him a</p> <p>12 license, they give him a receipt, we tell him he can</p> <p>13 operate his business We, therefore, send it to the</p> <p>14 County Commission for approval, and once the Commission</p> <p>15 approve it, we go ahead and print the license In this</p> <p>16 case, we probably didn't print a license because</p> <p>17 approximately 15th of April we started a new Hansen</p> <p>18 system And with that new Hansen system we started, we</p> <p>19 had so much troubles, we was not able to print licenses</p> <p>20 for some time</p> <p>21 Q Computer system wasn't up with you, I presume?</p> <p>22 A It was a new system</p> <p>23 Q And eventually did the license in this instance</p> <p>24 get printed?</p> <p>25 A I think it did</p>	<p>1 A Correct</p> <p>2 Q All right Do you have, either through your</p> <p>3 records or your personal knowledge, knowledge that in</p> <p>4 fact Statewide Bail Bonds did make an application of</p> <p>5 July 23, 1998?</p> <p>6 A Just going back, computer records is what we</p> <p>7 have right here, that they did make application</p> <p>8 Q So your computer records in fact verify the</p> <p>9 application having been made, is that correct, sir?</p> <p>10 A Right</p> <p>11 Q But you don't have any hard copies beyond that?</p> <p>12 A No</p> <p>13 Q Okay Because of the transfer to South Salt</p> <p>14 Lake?</p> <p>15 A That's correct</p> <p>16 Q Okay, thank you All right</p> <p>17 (Exhibit No 2 was marked for identification)</p> <p>18 BY MR PARSONS</p> <p>19 Q Let me show you what's been marked as</p> <p>20 Deposition Exhibit No 2, sir, and ask you if you can</p> <p>21 identify that document for me Take your time, look it</p> <p>22 over</p> <p>23 A This is actually just a copy that were printed</p> <p>24 out from our computers saying that Statewide Bail Bonds,</p> <p>25 the location, the account number that it was processed</p>
Page 11	Page 1
<p>1 Q But as of 7/23 of '98, was there a business</p> <p>2 license approved for Statewide Bail Bonds?</p> <p>3 A I would say probably within two weeks after</p> <p>4 that, because it takes about a week to put it to</p> <p>5 Commission and then it's approved by Commission Phone</p> <p>6 and mail businesses automatically approve</p> <p>7 MR FERGUSON I'll object, speculative</p> <p>8 BY MR PARSONS</p> <p>9 Q Do you happen to have any records relative to</p> <p>10 the application of Statewide Bail Bonds?</p> <p>11 A All records that we have pertaining to that</p> <p>12 particular file were transferred to South Salt Lake</p> <p>13 Q If I were to indicate to you that I had</p> <p>14 previously been told by South Salt Lake that they didn't</p> <p>15 have any records from Salt Lake County, would that be</p> <p>16 surprising to you?</p> <p>17 A I don't know All I know is when we -- every</p> <p>18 time that part of Salt Lake County annexed into another</p> <p>19 jurisdiction, we automatically send that file to that</p> <p>20 jurisdiction so they will have a history of that</p> <p>21 business</p> <p>22 Q So, theoretically, South Salt Lake ought to</p> <p>23 have the historical record of the application of</p> <p>24 Statewide Bail Bonds' business license application</p>	<p>1 on, states it was processed on July 23 at 1407, the</p> <p>2 issue date was 11/04/98 and expires 12/31/98</p> <p>3 Q Relative to the process date of 7/23/98, does</p> <p>4 that mean that's the date that the application was</p> <p>5 submitted?</p> <p>6 A Correct</p> <p>7 Q And the issue date of 11/4, does that mean that</p> <p>8 that is the date that the County Commission approved it?</p> <p>9 A No, that was probably the date that we</p> <p>10 actually, as I said earlier, we had problems when we</p> <p>11 started that new Hansen system, so we was having</p> <p>12 difficulty printing We had a big, mass printing in</p> <p>13 November, so we actually probably printed the hard copy</p> <p>14 of that license on that day</p> <p>15 MR FERGUSON Objection again as to foundation</p> <p>16 BY MR PARSONS</p> <p>17 Q Okay, thank you Tell me, sir, speaking of</p> <p>18 foundation, are you familiar with this instrument?</p> <p>19 A Yes, this is the receipt</p> <p>20 Q And is the receipt --</p> <p>21 A Actually, it's just a reprint of that</p> <p>22 particular file</p> <p>23 Q From your computer system?</p> <p>24 A From our computer system</p>

1 County business records?
 2 A We don't -- this is just -- it's someone coming
 3 in and asking for a reprint of what's on the account on
 4 the record, then this is what this is.
 5 Q This is what they would receive?
 6 A Right
 7 Q So this is something that was acquired from
 8 someone from Salt Lake County?
 9 A After the fact. This is not a receipt that we
 10 would have gave him.
 11 Q At the time?
 12 A At that time, that particular time.
 13 Q I understand But this does show what your
 14 computer records indicate in a hard copy form; is that
 15 right, sir?
 16 A Correct
 17 Q Relative to the 7/23/98 day, is that the day
 18 that the business is entitled to go forward as though
 19 they have a proper business license?
 20 A Yes, correct
 21 Q If a business makes this application and they
 22 have done what you have explained to me this morning
 23 thus far, are they legally entitled to operate as a
 24 business?
 25 MR HALL Objection, that calls for a legal

1 or expect
 2 BY MR PARSONS
 3 Q Well, I disagree entirely Please go ahead,
 4 sir, that's something for the judge to decide
 5 A The way our system is set up, when they pay
 6 their fees at that particular time, unless it's a
 7 commercial business dealing with alcohol or anything,
 8 we, in this particular instance, we would tell a phone
 9 and mail operator that he or she is entitled to operate
 10 Q Is there anything on Exhibit 2 that would
 11 indicate to you that Statewide's application for a
 12 business license was handled out of the norm?
 13 A No
 14 Q To the contrary then, does Exhibit 2 indicate
 15 to you that Statewide's business application was handled
 16 the way you were handling all applications at that point
 17 in time?
 18 A It was
 19 (Exhibit No 3 was marked for identification)
 20 BY MR PARSONS
 21 Q I'm going to show you what's been marked as
 22 Exhibit 3 to this deposition, sir, and ask you if you
 23 can identify that Xeroxed copy of a business card?
 24 A Yes
 25 Q And who is that?

1 answer
 2 BY MR PARSONS
 3 Q Please, sir
 4 A Yes
 5 Q Yes, sir, thank you Now, there's a
 6 handwritten notation on the bottom of this form, can you
 7 tell me what that notation says?
 8 A It says "Apply for license 7/23/98, waiting
 9 for software change, print license License was" -- I
 10 can't make out what that was
 11 Q Could that be valid?
 12 A Yeah, "valid 7/23/98 "
 13 Q Do you recognize the initials beside that?
 14 A That's Linda Kingsley
 15 Q Is she an employee of your department?
 16 A Yes, she is
 17 Q Is she authorized to make such a notation?
 18 A Right, that's our cashier and she receipted
 19 this particular application
 20 Q Kingsley, and by her initials on the bottom of
 21 this indicating that the license was valid on 7/23/98,
 22 would a property owner be entitled to presume that he
 23 was operating legally from that point forward?
 24 MR HALL Objection, calls for speculation, and he
 25 can't speculate as to what the property owner can assume

1 A That's an employee of mine's, Linda Kingsley
 2 Q Is that same individual whose initials appear
 3 at the bottom of Exhibit No 2?
 4 A It is
 5 Q And she was an employee of Salt Lake County
 6 during the month of July of 1998?
 7 A That's correct
 8 Q Thank you, sir
 9 (Exhibit No 4 was marked for identification)
 10 BY MR PARSONS
 11 Q I'm going to show you what's been marked as
 12 Deposition Exhibit No 4 and ask you if you can identify
 13 that document
 14 A It's the County Zoning Ordinance
 15 Q How do you know that's part of your County's
 16 Zoning Ordinance?
 17 A It's marked Salt Lake County at the bottom but
 18 we also deal with it every day
 19 Q Do you recognize it personally?
 20 A Yes
 21 Q Great Relative to the County Zoning Ordinance
 22 that is reflected by Deposition Exhibit 4, is this a
 23 County Zoning Ordinance that Statewide Bail Bonds
 24 operated under?
 25 A Correct

1 Q Do the criteria for the operation of a home
 2 occupation appear in Depo Exhibit No 4?
 3 A Not on the first page It would be on the
 4 second page in the conditional use which is a home
 5 occupation about midways down the page, item G
 6 Q But for purposes of my deposition, may I
 7 presume that I accurately state your position when I say
 8 that Exhibit 4 to your deposition, this instrument I've
 9 just handed you, is the Salt Lake County ordinance under
 10 which Statewide Bail Bonds was given a zoning permit --
 11 I mean a business license, is that right, sir?
 12 A That's correct
 13 Q Thank you
 14 (Exhibit No 5 was marked for identification)
 15 BY MR PARSONS
 16 Q I'm going to hand you what's been marked as
 17 Deposition Exhibit No 5, sir, and ask you if you can
 18 identify that document?
 19 A It's a copy of the Salt Lake County business
 20 license
 21 Q And for whom is this business license issued?
 22 A Statewide Bail Bondsman
 23 Q Is this identified by an account number?
 24 A It is
 25 Q What is that account number?

1 A 37430
 2 Q 37430?
 3 A Right
 4 Q And is that the same account number that
 5 appears in your deposition, paragraph No 2, sir?
 6 A It is
 7 Q Is this the business license that is referenced
 8 in Deposition Exhibit No 2?
 9 A It is
 10 Q Thank you very much, sir When does that
 11 license expire, by the way, according to its own terms?
 12 A 31 December, 1998
 13 Q 31 December of '98?
 14 A Right
 15 Q Of '98 Good for six months?
 16 A All our licenses expire the 31st of December
 17 every year
 18 Q Every year, thank you
 19 A Right
 20 Q Is there any reason why that business license
 21 would not have been renewed had this continued to be in
 22 Salt Lake County?
 23 MR FERGUSON Objection, speculation, insufficient
 24 foundation

1 BY MR PARSONS
 2 Q Any reason you know of at this point in time,
 3 sir?
 4 A No
 5 Q I appreciate the fact that you're relying on
 6 your counsel, that's important, that's good Lots of
 7 people don't
 8 MR FERGUSON Depends on who the lawyer is In
 9 this case, it's a good decision
 10 MR PARSONS Off the record
 11 (Whereupon off-the-record discussion was held)
 12 (Exhibit No 6 was marked for identification)
 13 BY MR PARSONS
 14 Q Let me show you what has been marked as
 15 Deposition Exhibit 6, sir Do you recognize that
 16 document?
 17 A Yes, I do
 18 Q Did you write that document?
 19 A Yes, I did
 20 Q And are the contents of that document true and
 21 accurate to the best of your knowledge and belief?
 22 A They are
 23 Q Were you served with a subpoena duces tecum?
 24 A Yes, I was
 25 Q Do you have any documents that you have brought

1 with you?
 2 A Just the map that you requested
 3 Q May I see it? Is this the Salt Lake County
 4 zoning map that was in effect at the time that the
 5 Statewide business application was made?
 6 A It is
 7 MR HALL Do you want to mark this?
 8 MR PARSONS Yes We'll mark this as Deposition
 9 Exhibit No 7
 10 (Exhibit No 7 was marked for identification)
 11 BY MR PARSONS
 12 Q Tell me, sir, is the property addressed 3350
 13 South 900 West, Salt Lake County, effective as of July
 14 of 1998, located within the confines of this zoning map?
 15 A Yes, they are
 16 Q Would you identify for me what that zoning map
 17 shows that zone to be?
 18 A Right here, A1 zone
 19 Q All right I have a red marker here Would
 20 you mind putting a line around the zone that we have
 21 just identified? Put your initials by that, please,
 22 sir And by that indication, you are telling us that
 23 the area that you have marked on this map is the area
 24 that was zoned A1 that Mr Webber acquired a business

1 A That's correct

2 Q Thank you, sir Do you have any knowledge of
3 -- knowledge personally of representations that were
4 made by South Salt Lake concerning the persons who
5 operated businesses in the annexed zone at the time of
6 the annexation of this particular property?

7 A No

8 MR HALL Objection to the characterization of a
9 person of the City of South Salt Lake Be more
10 specific, Brad

11 MR PARSONS He has no knowledge, so we won't go
12 any further because he has no knowledge

13 MR HALL I didn't hear that because I
14 interrupted

15 BY MR PARSONS

16 Q I appreciate the fact that there wasn't much
17 foundation for that question Relative to the zoning of
18 this particular property, did that zone change while the
19 property was still part of Salt Lake County between July
20 of 1998 and the time that it was annexed, which I will
21 represent to you was September 30 of '98?

22 A No

23 Q Okay Oh, let's review this map just for a
24 second here again Is this road immediately north of
25 this A1 zone that you have here, is that 3300 South?

1 A That's 3300 South.

2 Q All right Is this --

3 A I'm not particularly sure whether it's north or
4 south of it

5 Q This is 3300 South?

6 A This is 3300 South.

7 Q Well, I think this is north

8 A Right.

9 Q So this would be south of 3300?

10 A So right in there

11 Q Right in there somewhere?

12 A Right.

13 Q And are you familiar with the property itself
14 personally?

15 A No.

16 Q Okay

17 A I'm not.

18 Q Are you familiar with the construction of a new
19 jail complex and sheriff's administration complex by
20 Salt Lake County?

21 A No.

22 Q The zoning department didn't have anything to
23 do with the issues there?

24 A Not -- I couldn't answer that because I really
25 don't know

1 MR PARSONS That's fine. That's all I have.

2 Thank you very much. I appreciate your time.

3 EXAMINATION

4 BY MR HALL

5 Q Mr. Lawson, my name is Craig Hall I'm a South
6 Salt Lake City Attorney. I'd like to ask you some
7 questions Let's go back to the business license
8 process itself. If a person wants to apply for a home
9 occupation, walk me through specifically step by step
10 what that individual would need to do.

11 A Basically what they would do is tell us what
12 they're going to do.

13 Q How would they tell you, orally or by written
14 application?

15 A Orally, if when you come in you say, I want to
16 apply for a business, we ask them, Where is it located?
17 Is it in your home? Is it commercial? If they say it's
18 in their home, we immediately go to the map and make
19 sure it is in the county We ask them, What are they
20 planing on doing? If they're having customers, making
21 anything, anything like that in the home, it have to go
22 through a conditional-use process. If they say they
23 just gonna -- there's no customers or anything like that
24 coming to the home, then we go ahead and let them fill
25 out the appropriate paperwork, again, filling out the

1 business license application, application for a phone
2 and mail, which stipulate six criteria they have to
3 make If they can meet those criteria, then the staff
4 can approve it there at the counter

5 Q Let me ask you a question If, according to
6 the County Zoning Ordinance, which was in fact allegedly
7 on July 23, '98, Exhibit No 4, is a home occupation a
8 conditional use?

9 A If they gonna start having customers and stuff
10 like that come out, it's home occupation and is
11 conditional use But in this particular case, because
12 there's no customers coming to the home, no employees
13 coming to the home, no stock or trade kept on the
14 property, the staff can sign that at the counter, we can
15 approve that

16 Q Is there a county ordinance that gives you that
17 authority or right?

18 A That's the -- I won't say a county ordinance
19 per se It's a division policy

20 Q It's a division policy?

21 A Right

22 Q Despite the fact home occupation is listed as a
23 conditional use in the A1 zone?

24 A Right

25 Q So by policy --

1 A -- we can approve that And that is why we
 2 developed this particular form, if they gonna do
 3 anything in their home other than just a phone, mail,
 4 fax machine, that type, then they do have to go through
 5 a conditional use process, which would be filling out
 6 this application here, going to the community counsel,
 7 notifying all the neighbors within 300 feet of the
 8 particular business, and going to a planning commission
 9 and a planning commission make the final recommendation
 10 Q Okay When a person walks in and fills out
 11 the -- this form -- and can we have this marked? And I
 12 don't know what number we're on, 7 or 8
 13 (Exhibit No 8 was marked for identification)
 14 BY MR HALL
 15 Q When they fill out the form marked as
 16 Deposition Exhibit No 8, does your department go out
 17 and make an inspection of the premises where the license
 18 is sought?
 19 A No, not necessarily
 20 Q Let's be particular --
 21 A No
 22 Q -- in this case, regarding Statewide Bail
 23 Bonds?
 24 A Right
 25 Q Did you or any member of your staff to your

1 knowledge go visit the proposed location for Statewide
 2 Bail Bonds?
 3 A No
 4 Q So you rely entirely upon the representations
 5 of the applicant in the issuance of this license?
 6 A Right But, see, we also rely on our maps
 7 This is located in the home and it is an A1 zone and his
 8 representation on here is saying that it's going to be a
 9 phone and mail only If we go out and find out
 10 otherwise, that's grounds for revocation and I do set up
 11 a revocation to revoke the license based upon the zoning
 12 violation
 13 Q Is it illegal or not permissible under the home
 14 occupation ordinance which would be applicable to
 15 Statewide to have any signs or advertising on the
 16 premises?
 17 A Again, this here is what he signed to say
 18 there's no signs, no advertising authorized unless he
 19 comes back in and asked for a sign permit
 20 Q Would that include signs on vehicles?
 21 A We have no jurisdiction over signs on vehicles,
 22 but on this here, it said only private vehicles is
 23 allowed at the home
 24 Q What about signs on a mailbox?
 25 A Our ordinance I don't know exactly where -- it

1 does allow a small, like, a name plate sign on the door
 2 for, say, delivery like for UPS
 3 Q What about mailboxes in your opinion?
 4 A In my opinion, I couldn't answer to that
 5 because I'm not over sign ordinance
 6 Q As a person authorized by the County to issue
 7 these type of licenses, if a complainant came in and
 8 said, John Doe, who's operating this home occupation,
 9 has a great big sign on his mailbox advertising ABC
 10 Company, would you approve it? Would you set up a
 11 revocation hearing? What would you do?
 12 A If he's got a sign, a big sign in his yard or
 13 on his house saying that he's doing a business, it's not
 14 authorized according to this, so what I would do, I
 15 would send one of my land use inspectors out there to
 16 leave him a note as to become compliant within X number
 17 of days
 18 Q What about advertisement on billboards that
 19 says ABC Company at 1234 Elm Street, it's an off-premise
 20 sign that refers to a home that has a home occupation?
 21 A As long as he have no customers coming to his
 22 home
 23 Q Now, you're familiar with the area at Ninth
 24 West and about 3500 South where Mr Webber's home is
 25 located, and to where the business license was

1 apparently issued It's immediately across the street
 2 from the jail, the new jail facility
 3 A Uh-huh
 4 Q Did you have any concern when you issued this
 5 license that he could not practically comply with the
 6 requirement of no customers?
 7 A Do I? Did we have? No, we didn't
 8 Q So you were totally satisfied with the
 9 representations that Mr Webber -- that he would never
 10 have any customers walk across the street to his
 11 business?
 12 A Correct
 13 Q He applied for the license on June -- or excuse
 14 me, on July 23, 1998 When did the County Commission
 15 approve that license?
 16 A I'd probably speculate again, it probably went
 17 to the Commission within a week
 18 Q Did you bring any information or documents
 19 today that would indicate when the County Commission
 20 approved or denied or reviewed this?
 21 A No, I didn't
 22 Q Do you have any direct knowledge that they did
 23 in fact consider this and approve it?
 24 A Yes
 25 Q What is that knowledge based on and tell me

1 about it.

2 A. Knowledge based upon commissioners meet twice a

3 week, Monday and Wednesday. At that particular time,

4 every Monday and Wednesday, I have my clerks go in and

5 fix out a list for business licenses to be processed and

6 approved by the commissioner for that given week. We do

7 this on a, I guess daily -- weekly basis, so it

8 wouldn't -- his name would have probably came out within

9 probably -- the 23rd, depending on what day that was,

10 but his name would have came out the following

11 Commission meeting.

12 Q. Is that -- excuse me, is that based on your

13 normal operating procedure or direct knowledge that it

14 did in fact occur?

15 A. That's based upon our normal operating

16 procedures.

17 Q. So you have no direct knowledge that the Salt

18 Lake County Commission approved or denied this license?

19 A. No. But if I could go back and research the

20 record, then it would come out and say whatever the 23rd

21 was on, if it was on a Thursday, then it went to the

22 Commission that following Monday. If it was a Tuesday,

23 it went to Commission on that Wednesday of the following

24 week.

25 Q. Do you know when South Salt Lake effectively

1 A. Repeat that again.

2 Q. Did any member of the County Commission, during

3 the application period around July 23, 1998, or soon

4 thereafter, approach you or your staff suggesting or

5 requesting that the license for Statewide Bail Bonds be

6 issued?

7 A. Not to my knowledge.

8 Q. Okay. Let me be more direct. Did Commissioner

9 Brent Overson come to you and suggest that that

10 preferential treatment should be given Statewide Bail

11 Bonds -- be given to Statewide Bail Bonds in their

12 application for a business license?

13 A. Not to me, no.

14 Q. To your knowledge, to any member of your staff?

15 A. No.

16 Q. Did somebody come to you in November and

17 request that this business license be issued in

18 November?

19 A. No.

20 Q. Why was it processed and issued in November?

21 A. Again, as I said earlier, we started a new

22 Hansen system.

23 Q. What is a Hansen system?

24 A. Okay. It's our software that we issue business

25 licenses in. We were on a Paradox system, so we decided

1 annexed the property between 3300 South and 3900 South?

2 A. Our record indicates September 4, 1998.

3 Q. September 4?

4 A. Right.

5 Q. Do you know when that annexation was effective?

6 A. That's the date that they told us it was

7 effective, September 4, 1998.

8 Q. Referring to Deposition Exhibit No. 5, which

9 represents to be the business license, there's a date on

10 there that says issue date.

11 A. Correct.

12 Q. And what is that date?

13 A. That's dated November 4, 1998.

14 Q. Is that after the effective date of the

15 annexation?

16 A. Right. You want me to explain that date?

17 Q. No.

18 A. Okay.

19 Q. I've asked the question I wanted answered. Let

20 me ask you a very considerate question, a question that

21 I don't want you to take offense by, but I need to

22 know. Did a member of the County Commission come to

23 you, or to your knowledge, any member of your staff and

24 say that -- and direct you or suggest that a business

25 license for Statewide Bail Bonds be issued?

1 to change systems. We came on-line with a new update

2 system out of Sacramento, California. When we came

3 on-line with that system from April to about October, we

4 could not -- we did not print any hard copy business

5 license. We were having such a problem with it when we

6 had Sacramento come back in, worked on the process about

7 end of October or first part of November, we had a mass

8 printing, like we printed out something like about 8-

9 900 business license hard copies. Once they kicked out

10 of the computer system, then we automatically mail

11 these. This in particular was annexed into South Salt

12 Lake along with a bunch more, but they were already

13 flagged to be printed. So when they came out printed,

14 they had an issue date of 11/4/98. We did mail these

15 particular licenses to the applicant because they was

16 current at that particular time.

17 Q. Okay. Mr. Lawson, Linda Kingsley works for

18 you?

19 A. That's correct.

20 Q. Help me out on her scope of responsibility. I

21 thought I heard you say that she was a cashier?

22 A. Correct.

23 Q. Her business license card says she's a business

24 license specialist.

25 A. That's correct.

1 A It was drafted by the county attorney I'm
2 assuming.
3 Q Do you want to confer with your client?
4 MS BECKSTEAD Please.
5 THE WITNESS Okay. It was drafted by his
6 attorney.
7 BY MR HALL
8 Q Did you modify, when you received it, did you
9 modify any of the language or just review it and sign
10 it?
11 A No, I had it reviewed.
12 Q And reviewed by whom?
13 A By Rena.
14 Q Were any changes made from the original draft
15 that was given to you?
16 A Yes.
17 Q Were any changes made in paragraph 4 from the
18 original draft?
19 A I can't remember on that.
20 Q Do you know -- do you remember any of the
21 changes that were made from the original draft to the
22 document that is now known as Exhibit No. 1?
23 A There was some changes made, but I just can't
24 remember what they was.
25 MR HALL Okay. Thank you. I don't have any other

1 questions Thank you, Mr Lawson
2 FURTHER EXAMINATION
3 BY MR PARSONS
4 Q Just a second, Mr Lawson I'm going to have
5 to look just quickly here and see if anything has
6 arisen Mr Lawson, were there any complaints by
7 neighbors that would have facilitated an on-site
8 inspection by your staff?
9 A No
10 Q Relative to the questions concerning Mr
11 Overson, have you heard that Mr Overson thought that
12 bail bonds offices ought to be opposite the jail?
13 A I haven't heard anything
14 MR PARSONS Thank you That's all, sir Ms
15 Beckstead, could I get your telephone number?
16 MS BECKSTEAD 468-2650
17 MR PARSONS 2650?
18 MS BECKSTEAD Uh-huh
19 MR FERGUSON Here's what I'll do, let's put it on
20 the record we've stipulated that for purposes of our
21 summary judgment motion on Monday, assuming it goes
22 forward, that we can use the deposition transcripts
23 without signature As a courtesy to you folks, we'll
24 send you a copy anyway so you'll have a chance to review
25 it and make corrections, if that's appropriate at a

1 later date.
2 MS BECKSTEAD That's fine.
3 (Whereupon deposition was concluded.)
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1 STATE OF UTAH)
2)
3 COUNTY OF SALT LAKE)
4)
5 RUSSELL L LAWSON deposes and says
6 That he is the witness referred to in the
7 foregoing deposition that he has read the same
8 and knows the contents thereof, that the same are true
9 of his own knowledge
10
11 RUSSELL L LAWSON
12
13
14
15 SUBSCRIBED and SWORN to before me this _____ day of
16 _____, 2000
17 _____
18 NOTARY PUBLIC
19 Residing in _____, Utah
20
21
22 My Commission Expires
23 _____
24
25

Reporter's Certificate

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

I, KELLY SOMMERVILLE, Registered Professional
Reporter and Notary Public in and for the State of Utah,
do hereby certify:

That the deposition of RUSSELL L. LAWSON was
taken before me pursuant to Notice at the time and place
therein set forth, at which time the witness was by me
duly sworn to testify the truth;

That the testimony of the witness and all objections
made and all proceedings had at the time of the
examination were recorded stenographically by me and
were thereafter transcribed, and I hereby certify that
the foregoing deposition transcript is a full, true, and
correct record of my stenographic notes so taken;

I further certify that I am neither counsel for
nor related to any party to said action nor in anywise
interested in the outcome thereof.

WITNESS MY HAND AND SEAL this 16th day of
September, 2000.

KELLY SOMMERVILLE, RPR
Notary Public
Residing in Salt Lake County

My Commission Expires:
June 10, 2002

ADDENDUM 7

Transcript of the Court's Oral Decision, September 18, 2000

1 IN THE THIRD DISTRICT COURT - SALT LAKE CITY

2 SALT LAKE COUNTY, STATE OF UTAH

3 -oOo-

4 TY WEBBER and STATEWIDE)
BAIL BONDS,)
5 Plaintiffs,) Case No. 000901508
6 vs.) Case No. 20001021-SC
7 CITY OF SOUTH SALT LAKE,) ORAL ARGUMENTS ON
8 Defendant.) COUNTER MOTIONS FOR
) SUMMARY JUDGMENT
) (Videotape Proceedings)

9
10 BE IT REMEMBERED that on the 18th day of
11 September, 2000, commencing at the hour of 10:06 a.m.,
12 the above-entitled matter came on for hearing before the
13 HONORABLE WILLIAM B. BOHLING, sitting as Judge in the
14 above-named Court for the purpose of this cause, and that
15 the following videotape proceedings were had.

16 A P P E A R A N C E S

17 For the Plaintiffs: WILLIAM B. PARSONS, III
Attorney at Law
18 440 East 3300 South
Salt Lake City, Utah 84115

19 For the Defendant: DENNIS C. FERGUSON
Attorney at Law
20 Williams & Hunt
21 257 East 200 South, #500
P.O. Box 45678
22 Salt Lake City, Utah 84145-
5678

23 H. CRAIG HALL
24 South Salt Lake City Attorney
220 East Morris Avenue
25 Salt Lake City, Utah 84115

COPY



P R O C E E D I N G S

THE COURT: Statewide Bail Bonds vs. City of South Salt Lake. Case No. 000901508.

Counsel, would you enter your appearances, please?

MR. PARSONS: William Parsons on behalf of Statewide Bail Bonds, your Honor.

MR. FERGUSON: Dennis Ferguson and Craig Hall on behalf of the City of South Salt Lake.

THE COURT: All right. We're here on motions for summary judgment. Counsel?

MR. PARSONS: Yes. Are you ready to proceed?

THE COURT: Yes.

MR. PARSONS: Thank you, your Honor.

MR. FERGUSON: Your Honor, a question of the Court to begin with, but there are some procedural motions in terms of a motion to continue. And I didn't know if your Honor wanted to hear the argument on the merits of the motion for summary judgment, or--because Mr. Hall's going to handle that, I'm off the hook.

THE COURT: I'll hear the arguments on the motion to strike and motion to continue first, I probably ought to deal with that initially.

MR. FERGUSON: All right.

1 MR. PARSONS: Your Honor, it's my motion to
2 strike and there's the second, my motion to continue
3 (inaudible).

4 We have supplemented memorandum in support of our
5 objection to defendant's motion for summary judgment
6 indicating that we felt that there were a number of
7 procedural errors in that process, your Honor.

8 I trust that the Court is in possession of the
9 same and has the opportunity of reviewing it. I, frankly,
10 have not a great deal to add to that which we have written
11 down, the nature of the procedural errors that we find most
12 telling are the fact that the statement of facts that the
13 city has submitted in support of its motion for summary
14 judgment are not specifically supported by either affidavit
15 or references to the record; in other words, there are no
16 facts, there are only allegations that support the city's
17 motion for summary judgment.

18 As taken under the--the definitions of a Rule 56
19 and a Rule 4-501(2)(a) of the Code of Judicial
20 Administration, there is not a con--there is no concise
21 statement that sets forth the factual allegations, again
22 referring to the record and for that reason, we believe
23 that their motion for summary judgment should be stricken.

24 The reason that I have asked for continuation of
25 this process is because we were in the process of engaging

1 in discovery. We set depositions in this matter, actually
2 conducting two of them this past Friday, one involving the
3 officer of Salt Lake County who issued the--whose office
4 issued the business license to Ty Webber in 19--in July of
5 1998 and one involving the city building inspector.

6 There's at least one additional, if not two
7 additional depositions that will be required in that case
8 if ultimately, we are capable of at least finding the one
9 deponnee, (sic) who is a prior employee of South Salt Lake
10 and an inspector. And we require the deposition of Brent
11 Overson, Salt Lake County Commissioner. We have not been
12 capable of scheduling that with Mr. Overson, so we have not
13 noticed the same up.

14 We have conducted preliminary--preliminary
15 discovery and frankly, at this particular point in time, if
16 the case--if the Court decides that it's appropriate for us
17 to proceed, I don't think that'll be greatly prejudiced but
18 I'd prefer to complete the discovery before the motions for
19 summary judgment are argued.

20 I might add that I've not been capable of picking
21 up my copies of the depositions that were conducted on
22 Friday as of this point in time. I think my client did
23 yesterday, on Sunday, but I'm not sure about that and so--
24 he's not here yet and I can't tell you.

25 That's all that I have relevant to the same.

1 THE COURT: Thank you.

2 MR. PARSONS: I'll reserve, of course, my
3 arguments.

4 Your Honor, I would procedurally suggest that if
5 it's appropriate for us to argue both of our motions for
6 summary judgment, that it might, time-wise, permit us some
7 judicial economy if we simply argue our own affirmative
8 motions because the affirmations that we make in our own
9 motions are effectively the counter-positions that we have
10 in the opposition's motion and our objections to their
11 motions.

12 Thank you, Judge.

13 THE COURT: All right. Thank you.

14 Mr. Ferguson?

15 MR. FERGUSON: Your Honor, the--with regard to
16 the motion for a continuance, I--I guess I have two
17 problems. Normally, if--if a party believes that there are
18 issues of fact that--that they can't respond to a motion
19 for summary judgment until they discover, we proceed with
20 Rule 56(f) affidavits that lay out the discovery that's
21 desired and what the party thinks that discovery will
22 disclose.

23 The plaintiff has not done that in this case. I--
24 -I don't want to come in here and stand on procedure, but--
25 but this--the--the only issue before this Court is a

1 petition to ask this Court to judicially overturn a
2 legislative zoning decision of the City of South Salt Lake.
3 That's the issue before this Court.

4 And it's our position and always has been that
5 with regard to that claim, that's--that's a claim on the
6 record, on the legislative record, which is--which is
7 clearly attached to and made a part of our memorandum.

8 Plaintiff, for some reason in this case, decided
9 to proceed on two tracks simultaneously. One was to seek a
10 petition for review from this Court, the other was to file
11 a motion for--or a--a damage case that's pending before
12 Judge Lewis. Made the decision to--to--to go forward on
13 two different tracks on a--on a case arising out of the
14 same essentially fact situation.

15 And what the plaintiff is claiming and their
16 motion for summary judgment in this case is really not
17 relevant to the petition because what they're saying is,
18 gee, we had a business license when we were--we were given
19 a business license by Salt Lake County and so even though
20 City of South Salt Lake has now annexed us, we're entitled
21 to be grandfathered in and we're entitled to a zoning
22 change based upon the business license that was granted us
23 by--by Salt Lake County.

24 And that--that issue or that argument may be, may
25 be relevant in the damage case pending before Judge Lewis,

1 but it is not relevant to the Court's determination of the
2 legislative decision made by the--by the City of South Salt
3 Lake in no rezoning the plaintiff's property. And that's
4 really the sole issue before, that we believe is before
5 this Court.

6 And if we focus on that issue, all of the other
7 procedural stuff in terms of wanting more discovery and--
8 and the argument over whether that--that's Mr. Parsons' own
9 fault for not proceeding more quickly and--and all of that
10 stuff is--is really not important.

11 We think what--what ought to occur here today is
12 to hear argument on our motion for summary judgment that
13 relate solely to the petition, to have this Court review
14 that legislative decision and argument on the motion for
15 summary judgment which does raise issue--issues of fact
16 that's been filed by the plaintiff. It is not--is not a--
17 this is not the appropriate forum for that. Unless there's
18 a consolidation down the road of these cases, that's
19 something that Judge Lewis would decide.

20 THE COURT: Okay. Thank you.

21 Anything further?

22 MR. PARSONS: No. I'm prepared to go forward and
23 argue my motion (inaudible)

24 THE COURT: All right. Well, what I'm going to
25 do, I'm going to deny the motion to continue and deny the

1 motion to strike. Arguments of counsel for the defendant
2 were persuasive to the Court. I believe that what is
3 before me is not the sort of--of motion that would be
4 vulnerable to a motion to strike and I think on--in terms
5 of a continuance--on the motion to continuance--continue
6 the matter, again, what the Court believes it has before it
7 is what has--has been raised as--as the legislative
8 question and therefore, I think that this is a time--an
9 appropriate time to proceed on that.

10 I'll hear your argument on the merits now.

11 MR. PARSONS: Thanks, Judge. Ready to go
12 forward.

13 MR. HALL: Your Honor, I believe this is the
14 City's motion for summary judgment.

15 MR. PARSONS: Well, we both have motions for
16 summary judgment pending.

17 THE COURT: I'll let--well, you go ahead and
18 argue yours first.

19 MR. HALL: Okay.

20 THE COURT: That's fine.

21 MR. PARSONS: I don't know if this is the easiest
22 one to work with, Judge, but I need (inaudible) as to the
23 (inaudible) By the way, I'll (inaudible)

24 Judge, the area that we are dealing with here is--
25 --was in the confines of the City of South Salt Lake. The

1 City of South Salt Lake has in its southwestern corner an
2 area that is bounded--boundaried by the Jordan River on
3 the western side and then an arbitrary boundary across the
4 southern border.

5 The street that is designated 900 West runs
6 through this and that's 900 West that my pen is pointing at
7 right there. And immediately below this Red B, this is A
8 zone is the area that we're dealing with and it is zoned A-
9 1, agricultural one, and this is this dark green zone up
10 here.

11 I have in my memorandum a--an exhibit, your
12 Honor, and I'd appreciate it if you'd refer to that, it's
13 Exhibit J, and Exhibit J is a color map that--this is
14 Memorandum in Support of Plaintiff's Motion for Summary
15 Judgment, your Honor.

16 THE COURT: I'm--I'm looking for it.

17 MR. PARSONS: Uh huh. Thank you.

18 THE COURT: Okay.

19 MR. PARSONS: I was working from my own copy.
20 Appreciate that.

21 The area that is impacted by the motion for
22 summary judgment, your Honor, is boundaried by 33rd South
23 on the bottom of your page and that page runs in a
24 southerly direction towards the top of the page and the
25 southern boundary of the City of South Salt Lake is

1 approximately 3655 South.

2 900 West is shown in the center of that page and
3 the properties that we are asking to have the Court
4 consider the issue of zoning relative to is Statewide Bail
5 Bonds' property that is on the right-hand portion and it's
6 in a tan color, if the Court can see that.

7 THE COURT: I see it.

8 MR. PARSONS: Thank you, your Honor.

9 It's important for you to understand factually
10 the nature of the configuration of the property because
11 that's a central portion of the argument that we are
12 making.

13 Along 33rd South, your Honor, coming from the
14 east, we find a golf course to the north of 33rd South, a
15 convenience store on the corner, then a giant parking lot
16 with a Sam's Club, a very large retail organization,
17 wholesale-retail organization on the northwest corner of
18 the intersection of 33rd South.

19 On the south side of 33rd South, the block across
20 the street from Statewide Bail Bonds, we find Salt Lake
21 Valley GMC, as we approach from the east, a very large
22 parking lot and then the Salt lake County Sheriff's Office
23 in a very large building directly across the street. And
24 then immediately south of the Salt Lake County Sheriff's
25 Office is the Salt Lake County Jail and another exceedingly

1 large building and--and south of the Salt Lake County
2 Sheriff's Office is another very large parking lot and UTA
3 facility on both sides of 900 West, both sides of 900 West.

4 And then when you come from the north to the
5 south on the west side of that street, you'll find
6 properties that are numbered three, two and one and then
7 Statewide. Three, two and one are all residences,
8 Statewide has two properties there and they're both
9 residences. Of those five properties in line, three, two,
10 one and then the two for Statewide, four of those five are
11 owned by bail bonding companies. The property on the
12 corner, Number Three is not, and I have furnished an
13 affidavit of Mr. Frederickson, but I will represent that he
14 has stood in--in meetings before South Salt Lake in
15 reference to the fact that he is not opposed to the
16 rezoning of the property.

17 Immediately south of Statewide is the brand new
18 call center for Salt Lake County, that's where the 9-1-1
19 calls are--go in come--go in and come out from. And then
20 the--below that's, the jail command center, Salt Lake
21 Valley Youth Detention Center below that, and again, the
22 very large complex for UTA.

23 Behind that, you have farm ground. When I say
24 behind it, I mean to the west of our property, to the west
25 of--of--of the 1000 West. You'll see that UTA, Salt Lake

1 Valley Youth Detention Center and the 9-1-1 Center extend
2 all the way in to 1000 West, but there are some farms along
3 1000 West, on the east side of that street.

4 There is a--there is another property that is
5 owned by a bail bondsman that is Number four, along the
6 south side of 33rd South and then Number five is a vacant
7 field and Number six is the Silver Bullet Lounge, it's a
8 beer joint, which has been there for a long, long time.

9 That's the nature of the property that we are--
10 that we are talking about, Judge. The nature of the
11 argument that we are making is relatively simple. That
12 argument is, is that at a given point in time, Salt Lake
13 County anticipated that it was appropriate to construct a
14 whole series of municipal facilities, the jail complex, the
15 9-1-1 center, the sheriff's office, the Youth Detention
16 Center and a whole bunch of other things down there,
17 exactly across the street from Mr. Webber's property.

18 Mr. Webber, in anticipation of a new jail going
19 in there and jail center and so forth, purchased that
20 property, as did a number of other bail bondsmen, purchased
21 property across the street from the jail, basically, as did
22 a number of other bail bondsmen.

23 At the point in time that Mr. Webber bought his
24 properly (sic) he began immediately the process of
25 remodeling that property and then in July of 1998, in fact,

1 on the 23rd day of July of 1998, Mr. Webber filled out an
2 appropriate application for a business license from Salt
3 Lake County. That application was granted.

4 On this past Friday, we took the--the deposition
5 of the gentleman who runs the--the Department, Mr. Russell
6 Lawson, who gave that business license out. And Mr. Lawson
7 verified, I will represent to you, although I do not have
8 the record available to me because the depo was just taken
9 Friday, and the reason it was just taken Friday is because
10 we couldn't work any other time out before the arguments.

11 Anyway, Mr. Larson (sic), I will represent to
12 you, indicated, just as his affidavit which is appended to
13 our motion for summary judgment so indicates, that the
14 business license application was in order by Ty Webber and
15 that the business license was granted effective July 23rd
16 of 1998.

17 In September of 1998, South Salt Lake City, or
18 the City of South Salt Lake, annexed the property that Mr.
19 Webber occupied. It also annexed all of the property that
20 contained the call center, the Youth Detention Center, the
21 UTA facility and the jail complex and Sam's Club and the
22 golf course and GMC and so forth. It annexed that whole
23 zone right down to 3600 South--or actually below that.

24 I--I misspoke when I said 36 was the southern
25 boundary. It is not, it's just the southern boundary of

1 that A-1 zone, but it annexed property there. I don't know
2 exactly where the annexation covered, but all of that was
3 zoned A-1 at the time of the annexation.

4 Salt Lake County's A-1 zoning, it is represented
5 by the documents submitted by the City of South Salt Lake,
6 is the same zoning, contains the same language, is the same
7 zoning ordinance as South Salt Lake's zoning ordinance
8 relative to A-1. We have appended in our motion for
9 summary judgment a copy of Salt Lake County's ordinance for
10 A-1 zoning.

11 We were, at the time that we acquired our
12 business license on July 23rd of 1998, doing business as a
13 home owner occupied business in the A-1 zone, which South
14 Salt Lake has objected to and which Salt Lake County
15 indicated in--again, in Russell Lawson's deposition this
16 past Friday, was entirely appropriate; in other words, that
17 there was nothing wrong, as long as we meet all of the
18 criteria with doing business as a home occupied business.
19 There was no prohibition for bail bondsmen having a bail
20 bonding office in their home, living there, running their
21 bail bonding office, as long as they did it within certain
22 configurations an that is precisely what Mr. Ty Webber did.

23 He remodeled it, moved in, opened his business up
24 and did business there for a number of weeks, if not a
25 couple of months, let's see, August, September, eight,

1 nine, approximately nine or ten weeks prior to the
2 annexation by South Salt Lake.

3 Now, the--the home occupation use that is
4 permitted by Salt Lake County was--was again verified by
5 the affidavit which is, I believe, Exhibit 4--no, C, pardon
6 me, to our memoranda, and--and Mr. Lawson indicated that
7 even though South Salt Lake may have treated an application
8 of that variety as a non-conforming use requiring a
9 hearing, Salt Lake County did not. All that was required
10 was that Mr. Webber fill out the application, sign the
11 affidavit, pay the fee and he was capable of doing
12 business.

13 Now, it just so happened that Salt Lake County at
14 that particular point in time had changed computer systems
15 a few months earlier and they were incapable of actually
16 issuing the business license on that date. They issued the
17 business license on November 4th of 1996, in a mass
18 printing, according to Mr. Lawson. He indicated that there
19 were a number of hundreds of those business licenses that
20 were printed on that day.

21 He further indicated in his deposition that there
22 was nothing unusual about that, meaning that South Salt--
23 that Statewide Bail Bonding was not treated out of the
24 ordinary, that they were handled in the same methodology,
25 by the same--in the same manner that any other business

1 would have been handled, who had made such an application
2 on that day and in fact, that is precisely what happened.

3 We--we learned in the course of the deposition
4 that the guidelines under A-1 zoning do not speak
5 specifically of bail bonding organizations as being
6 permitted as home occupied--home occupation businesses, but
7 South--but Salt Lake County treats that as being
8 appropriate unless it is specifically denied. Unless there
9 is a prohibition in the license--check that, that in the
10 statute that would prohibit you from engaging in some kind
11 of business, they allow you the opportunity of going forth
12 and doing business.

13 I will point out to you that the Supreme Court of
14 the State of Utah has, on a number of occasions, reviewed
15 that issue and in Patterson vs. Utah County Board of
16 Adjustments, a 1995 case, I said Supreme Court, it's the
17 Court of Appeals. The concept associated with whether or
18 not you should be permitted the opportunity of going
19 forward and--and doing business in the zone unless there
20 was a specific prohibition to the contrary was affirmed,
21 specifically. That case was affirmed subsequently by the
22 Utah Supreme Court in a 1999 decision entitled Springville
23 Citizens for a Better Community in the City of Springville
24 vs. the City of Springville. Both of those cases are cited
25 and references provided in our memoranda.

1 The--the nature of the--the nature of the
2 arguments that we make based upon those factual allegations
3 are as follows, your Honor: Basically, that--and--and the
4 arguments are twofold. Basically that Mr. Webber's
5 business, the Statewide Bail Bonding business was a legally
6 authorized business doing business in an appropriate zone
7 at the point in time that South Salt Lake annexed his
8 property. And as such, they're grandfather, and nothing
9 more complex than that, by the way of the first
10 consideration, the first argument, the first point.

11 I presume that the Court would not require me, we
12 do cite in our memoranda the cases that support the
13 proposition that grandfathering is appropriate when a
14 business is doing business legally and the zoning is
15 changed, he's entitled to continue to do business until
16 such time as he effectively stops doing that business.

17 That's a relatively traditional law. The English
18 common law is, is of course that you're entitled to do
19 business on your property regardless of what you're doing
20 until there's a specific--specific prohibition by law and
21 that specific prohibition would have to be justified in
22 the public interest.

23 That has been--that English common law has been
24 substantiated again in both the Springville and the
25 Patterson cases that I have referred to previously. That

1 is the law of the State of Utah at this particular point in
2 time.

3 And that gives rise to the second point of
4 interest or--or--or point that I wish you to consider and
5 that is, is that in addition to being grandfathered,
6 there's no exclusion. He's appropriately in the right
7 zone. He's not excluded from the language--by the language
8 of the statute and I might point out that South Salt Lake
9 has not amended this A-1 zoning or had not at that point in
10 time. I believe they may subsequently have done so, but
11 they had not amended their A-1 zoning ordinance and--at the
12 point in time of the annexation, and at the point in time
13 of the annexation, there was no prohibition for home
14 occupied business and in fact, they were specifically
15 granted and bail bonding companies were not specifically
16 prohibited as a home occupied business in the A-1 zoning
17 under South Salt Lake's zoning ordinances.

18 So, for the reason that we have a proper business
19 license at the time of the annexation, that we therefore
20 ought to be grandfathered and that we qualify under the A-1
21 zoning anyway, we suggest to you that it is appropriate to
22 force the City to permit us the opportunity of either
23 continuing to do business as a non-conforming use and grant
24 us a business license accordingly. Or, in the alternative,
25 we have suggested that the actions of the City of South

1 Salt Lake constitute a reverse spot zone.

2 Now, the reason that we suggest that they
3 constitute a reverse spot zone is best understood when you
4 look at that little diagram that you have before you, your
5 Honor. That diagram shows you quite clearly that what we
6 have along 900 West, when we are below 33rd South and above
7 3655 South, is a--a--an area that is approximately three-
8 and-a-half blocks long on two sides of the street,
9 containing--and I don't know whether you would consider it--
10 -I don't--you don't call the Salt Lake County Jail
11 commercial. UTA may or may not be commercial, I frankly
12 don't know that, but it--we all know what UTA does, they
13 operate buses and they don't raise cows and pigs and
14 horses, nor does the Salt Lake County Jail, nor does the
15 Salt Lake County Sheriff's Office or GMC--Valley--Salt Lake
16 Valley GMC, nor does the 9-1-1 call center, the jail
17 command center, the Salt Lake Youth Detention Center.

18 And I might add, neither do Statewide Bail Bonds,
19 Hy & Mike's Bail Bonds or Beehive Bail Bonds, the owners of
20 properties listed as Statewide Bail Bonds, numbered one and
21 two and four on your map, along 900 West and 33rd South.
22 The gentleman there, who is Mr. Frederickson, on the
23 corner, Mr. Frederickson, as I've indicated, I haven't an
24 affidavit from him, he--he has not been willing to produce
25 one, he has indicated at this particular point that--that--

1 he has indicated in public meetings that he has no
2 objection as long as he was able the opportunity to
3 continue to--to have animals until such time that his
4 property was sold. He recognizes that the property is
5 prime commercial property and ultimately, that's what it
6 will be.

7 Now, when you consider the physical
8 characteristics and you look at the nature of that which
9 surrounds Statewide Bail Bonding, then you can clearly see
10 why we would suggest that there is in fact a reverse spot
11 zoning.

12 And the cases provide that, and we've cited you
13 to the cases in the memoranda. Cases provide that--that
14 spot zoning involves the concept of an isolated piece of
15 ground being zoned differently from surrounding ground for
16 the benefit of those persons in that isolated zone.

17 Well, we only have Mr. Frederickson on the corner
18 along 900 West as it goes all the way from 33rd to 3655
19 that even remotely is agricultural in character and
20 everything else is other a business or vacant ground, one
21 vacant lot, a whole bunch of business people who want to be
22 in business, who aren't now because they haven't been
23 issued business licenses; but trust me, when I tell you
24 that Hy & Mike's Bail Bonds and Beehive Bail Bonds have
25 also appeared before the City of South Salt Lake and

1 petitioned for a consideration of rezoning as well.

2 Now, it would make a tremendous amount of sense
3 for one to say, my goodness gracious, 900 West looks a
4 whole lot like it's an area that isn't going to in the
5 future, raise cows and pigs; but in the future, is in fact
6 going to operate as either quasi-public or commercial
7 ground. And that's precisely what is occurring today
8 without the benefit of the rezoning.

9 Now, I admit, sir, that the zone that is A-1 runs
10 from 900 West all the way over to the river along our side
11 of the road, all the way across the other side is--is--I
12 was about to say is light industrial. It's not, your
13 Honor.

14 The--the map, if I understand it correctly, no,
15 that's correct. Across the other side is light industrial,
16 this gray zone and we're here, if I--if I am looking at the
17 map correctly and Hy &--yes, I am. Right here. This is
18 the Statewide property right at the end of my finger--I
19 know you can't see that from here, but you can see the
20 color differentiation and the A-1 zone is the dark green
21 and the light industrial is this and this is business.

22 So, we are surrounded on three sides by either
23 light industrial or business zone and all the way down 900
24 West, which is this road that separates the two zones, all
25 the way up and down 900 West on both sides is the property

1 that I have described.

2 For us to consider that--that the modification of
3 the Statewide Bail Bonding property and, for instance, Hy &
4 Mike's and Beehive Bail Bond and so forth, to accommodate
5 their business operations from A-1 to whatever South Salt
6 Lake wants it to be in order to permit us the opportunity
7 of operating a bail bonding there would be selective zoning
8 for the benefit of the owners, is precisely the opposite.
9 The selective zoning has occurred by South Salt Lake in--in
10 prohibiting us from having the opera--the opportunity to
11 operate our businesses there when you have clearly either
12 commercial, industrial or quasi-public operations that
13 totally surround us and encompass all of the property that
14 we're seeking to have rezoned.

15 So, we have suggested that the decision of the
16 City Commission is arbitrary and capricious and that the
17 arbitrary and capricious decision is not substantiated by
18 any evidence and that since it is arbitrary and capricious
19 and not substantiated by any significant evidence, as is
20 required, I might add, by the specific language of the
21 Springville Citizens case; since it is not substantiated or
22 is not substantiated by any significant evidence, that we
23 are entitled, as a matter of law, to have that rezoned
24 because their actions are again, arbitrary and capricious.

25 Now, in order to substantiate your entitlement to

1 do such a thing because the City will argue that your
2 discretion is exceedingly limited, because the only thing
3 you have the opportunity of doing is reviewing the facts of
4 the things that have occurred, the processes that have
5 occurred and making a determination as to whether or not
6 those concepts were conducted appropriately, those actions
7 were conducted approximately, I wish to point out to you
8 that the Court of Appeals--check that, the Supreme Court in
9 the Statewide case, used some remarkably interesting
10 language.

11 It said that a municipality's land use is
12 arbitrary and capricious if it is not substantiated by--if
13 it is not supported by substantial evidence. And then it
14 went on to say that the standard of review in determining
15 whether there was an arbitrary and capricious action that
16 had been undertaken by a board of adjustments or a city
17 council, in this case, both the board of adjustments in
18 this case and the city council, by the way.

19 Court said that they would review the evidence in
20 the record to insure that the city proceeded within the
21 limits of fairness and acted in good faith.

22 Now, I--I challenge you to consider what the
23 concept of fairness and acting in good faith would mean.
24 When you look at Exhibit J and you see that which surrounds
25 us on--on three sides, and we're not talking about the

1 property behind our lot line, to the west of us. And I
2 recognize that--that there may be difficulty in drawing a
3 boundary behind there because the properties don't all
4 reach the same distance towards 1000 West or something of
5 that character; but when you look at what surrounds us,
6 when you look at the reality of the circumstance and you
7 ask yourself--when you apply the standard of review that
8 the Supreme Court has said you would apply and that is to
9 examine the record to insure that the city proceeded within
10 the limits of fairness and acted in good faith, you can see
11 that is--that they didn't, they haven't. They haven't.

12 We had a business license so we ought to have
13 been grandfathered. That's not fair that they didn't
14 grandfather us; in fact, it's illegal, it's an illegal act.
15 They can't not do that. We're entitled to be
16 grandfathered.

17 We might not have been entitled, I admit, to the
18 zone that--I mean to the license that we got, but we got
19 it. I'm not suggesting that we weren't entitled to it, I'm
20 just saying argumentatively, let's suggest that--that we
21 didn't meet all the criteria. Well, once we got it, Mr.
22 Lawson explained that the process is, is for somebody to
23 complain and a review hearing to take place and then if you
24 made an application to revoke, you'd have a hearing to
25 revoke the license; but you don't not grandfather us.

1 If we have the license and you annex us, we're
2 entitled to continue to do business and we did that, we had
3 the licenses and we were grandfathered. Now, that's the
4 first point.

5 Second point again is that the A-1 zone didn't
6 change between Salt Lake County and South Salt Lake, the
7 language didn't change. We qualified under Salt Lake
8 County and we don't have any specific exclusions in South
9 Salt Lake's language that says we don't qualify; therefore,
10 we do. And that's what the case law says, as I pointed out
11 to you in the memorandum.

12 And in addition to that, as I've said, when you
13 look at it, it's clearly a reverse spot zone. That is
14 precisely what it is, they're treating us unfairly, they're
15 treating us arbitrarily because they're not allowing us the
16 opportunity of doing what UTA is doing, what Valley Mental
17 Health is doing, what--what the GMC dealership is doing and
18 effectively, the same thing that--that Salt Lake County is
19 doing when they operate their business operation of the
20 sheriff's office, the jail, the call center and the Youth
21 Detention Center.

22 And for you to think that--that, you know, I--I
23 admit that those are all public things and I admit that
24 those public things have exclusions in the language of
25 statutes of--of the zoning ordinances, but still, the point

1 is, is--is that that's the nature of everything that's
2 there.

3 And when you look at that, they don't meet the
4 standard of fairness and good faith and that is the
5 standard, that is precisely the standard. And that's the
6 standard of review and that's what the case says that it is
7 and that's still good law. That's precisely the standard
8 that you need to be applying in this case.

9 So, for all of the reasons that I have stated, we
10 are properly before you with regards to the issue of,
11 number one, either ordering the City grant us a grandfather
12 provision or--and--and a new business license in conformity
13 therewith, or in the alternative and really, it ought to be
14 "and/or" because I think we're entitled to both, and/or
15 grant us a zone change because they have not acted, and you
16 are--you are reviewing both the question of our application
17 for a business license, we--and you'll see in our factual
18 allegations, we made an application for a business license,
19 it was denied, we made an application for a zone change, it
20 was denied. So, you're dealing with two sets of records
21 here, not just one, it's not just the question of the zone
22 change.

23 And in both instances, I believe that--that we
24 have not treated as the Supreme Court requires, as the
25 Court of Appeals has suggested, the Supreme Court has

1 affirmed, with an eye towards fairness and good faith.

2 Do you have any questions of me, sir?

3 THE COURT: Thank you, Mr. Parsons.

4 MR. PARSONS: Thank you very much. I appreciate
5 your patience.

6 THE COURT: Okay. Before you stand, Mr. Hall,
7 would the counsel for Lacido versus Airbrooke step forward
8 please?

9 (Whereupon, the Court handled an unrelated
10 matter.)

11 THE COURT: All right.

12 Mr. Hall?

13 MR. HALL: Thank you, your Honor.

14 For the sake of clarity, I'd like to clarify some
15 misstatements of Mr. Parsons. It's probably because of his
16 unfamiliarity with the events and the fact--and the
17 situation surrounding South Salt Lake.

18 On October 1st, 1998, the City of South Salt Lake
19 annexed the property from the south--or the center line of
20 33rd South all the way to 3900 South, from the Jordan River
21 east to 700 East. This was not just some piecemeal
22 annexation of a few acres of property. I think the Court
23 might have got the impression that just the area identified
24 in green on the map was annexed, but in fact, it was not.
25 The City went from 3300 South to 3900 South, Jordan River

1 to 700 East, which was about a 40 percent increase in the
2 size of the city.

3 This is an application or a petition for review
4 of a zoning decision made by the City Council of the City
5 of South Salt Lake in January of 2000. Counsel's attempted
6 to confuse the issue of the petition for review with the
7 issue of the grandfathering the business license.

8 Mr. Parsons has filed a separate and independent
9 action for that. That is--as Mr. Ferguson has indicated,
10 that is presently pending before Judge Lewis.

11 In our motion for summary judgment, we address
12 briefly the issue of the business license. If in fact it
13 is properly before the Court today, we believe that it
14 needs to be dismissed summarily because he, Mr. Parsons on
15 behalf of his client, or other counsel, did not follow the
16 Rules of Administrative Procedure and did not exist their--
17 exhaust their administrative remedies as provided for by
18 the business license ordinance of the City of South Salt
19 Lake.

20 They had plenty of opportunity to file an appeal
21 before the hearing license board within 30 days after
22 denial of their application. Such took place, the denial
23 and it is in our memorandum, on July 2nd, 1999. No appeal
24 from that denial was taken at all on behalf of Statewide
25 Bail Bonds or Mr. Ty Webber. And--

1 THE COURT: Is--is that your response to his
2 issue of grandfathering, that--was there an independent
3 response?

4 MR. HALL: My response to that is, no, that--that
5 is not directly our response because we do not believe that
6 it was grandfathered. We believe and are prepared in the
7 other action to show that the license was not properly
8 issued.

9 Mr. Lawson, in his deposition on Friday,
10 testified that, yes, it was a conditional use, a home
11 occupation under the terms and conditions of the county
12 zoning ordinance, it was a home occupation; but despite
13 that fact that a home occupation requires the filing of a
14 conditional use permit application and going through the
15 planning and zoning process of Salt Lake County, Mr. Lawson
16 issued that without any directive, policy or executive
17 order from the county commission that they just issued the
18 home occupation.

19 We submit that that was an illegal act of a
20 functionary in Salt Lake County and we're prepared to show
21 that in the action pending before Judge Lewis.

22 We do not believe that it is a proper item to
23 bring up under 10-9--or excuse me, yeah, 10-9-1001 of the
24 Municipal Planning Act. It says a petition for review may
25 be filed of a zoning action of a city council or a city, or

1 this happens to be a board of adjustments, must be filed
2 within the statutory period of 30 days.

3 That's why he's here. He is appealing from a
4 decision of the city council to deny a request for a
5 rezoning of a single one lot parcel of ground. And if you
6 listen to Mr.--Mr. Parsons today, he would want you to
7 believe that this was a global application for rezoning the
8 whole area.

9 He's taken much time and effort to explain to you
10 about the uses that exist on 900 West. The uses that he's
11 talking about, Beehive, Hy & Mike's and those sort of
12 things do not exist. They're only--all parcels of
13 property, homes, residential units are owned by those
14 businesses, they're not operating those businesses.

15 And in fact, they have had their opportunity
16 before the Planning & Zoning Commission and the city
17 council for rezoning applications and those are also--were
18 rejected by the city council.

19 Now, this is an application for zoning one parcel
20 of ground. And if you go back to the Eng Floral and the
21 Crestview case in 1979, I believe, more than 20 years ago,
22 it says spot zoning is illegal. If you take that map and
23 carve out one piece, one lot, one residential lot on the
24 west side of 900 West and zone it either commercial or
25 light industrial, that is the classic case of spot zoning.

1 His argument that it is a reverse spot zoning and not to do
2 it is fallacious.

3 Your Honor is well familiar with, I think the--
4 the code and the state statutes that provide that the
5 courts shall presume that land use decisions and
6 regulations of a municipality are valid. And your only
7 scope of review is to determine whether or not the decision
8 is arbitrary, capricious or illegal.

9 There has been on representation in any
10 memorandum, any affidavit, that this action by the city
11 council and the City of South Salt Lake, following the
12 recommendation, unanimous recommendation of the Planning &
13 Zoning Commission and the unanimous recommendation of the
14 community council that it be denied.

15 The courts have--the Court of Appeals and the
16 Supreme Court have recently interpreted what arbitrary and
17 capricious mean. And the recent case of Harmon City vs.
18 the City of Draper talks about reasonably debatable. Now,
19 Mr. Parsons and I all day long could debate whether or not
20 the zoning change is appropriate. Reasonably debatable.

21 Now, that the court has said if it's reasonably
22 debatable and the city--then the following city council
23 decision should be upheld and it's not arbitrary and
24 capricious.

25 I would call the Court's attention to the record,

1 the findings of fact and the minutes where both the
2 Planning & Zoning Commission and the city council, they
3 entered findings, they entered conclusions. Based on the
4 testimony they received, the staff report and the
5 recommendation they received and the comments of the
6 applicant and the property owners in the area, all of those
7 findings and conclusions were consistent. And the findings
8 were these:

9 Number one, the rezoning was contrary to the
10 general plan. Mr. Webber did not even apply to amend the
11 general plan. He just said, Please rezone my property.
12 Finding number one is contrary to the general plan.

13 Number two, we've talked about. The zoning would
14 admit--would amount to spot zoning.

15 Number three, the city has made a decision in the
16 general plan that this area should remain agricultural. As
17 you can see from the map very graphically, the city council
18 in their policy and legislative decision-making capacity,
19 have decided they want some agricultural uses in the City
20 of South Salt Lake.

21 As you can see, this property across the--the
22 Jordan River, the city council in 1998 adopted a Jordan
23 River master plan to preserve the area and the character
24 and to develop those type of facilities for the benefit of
25 the residents and the other citizens of the community.

1 This general plan in the denial of rezoning is consistent
2 with that action.

3 And number four, two-thirds of the city without
4 the appli--without applying for a conditional use or any
5 other type of application is available for the
6 establishment of the business and running the business that
7 Mr. Parsons' client would like to run.

8 For example, he could go across the street. If
9 he could acquire property, he could operate his business
10 there. He mentions that GMC is located right next door.
11 That is a misstatement. GMC is not located right next door
12 to this property. It's approximately two blocks away on
13 Seventh West, behind the jail facility and does not even
14 abut or front this property. This property of Mr. Webber's
15 is surrounded on three sides by agriculturally zoned
16 property.

17 The Court is familiar with the standard of
18 review. The Court must not substitute its judgment for
19 that of the zoning body, both the Planning & Zoning
20 Commission and a reference--and also the city council.
21 Even though the decision could be highly debatable, that
22 does not render it arbitrary, capricious or illegal.

23 As the council has set forth, its basis of denial
24 also--all was--all were supported by testimony,
25 recommendations and findings.

1 We've discussed the issue of spot zoning. The
2 only property that was sought to be rezoned in this
3 application, I reiterate one more time, was the small
4 parcel owned by Mr. Ty Webber. It is a home. He wants to
5 change that home into a commercial facility surrounded by
6 agricultural land. Agricultural land that the city
7 council, in their legislative position and legislative
8 capacity has--had determined by the general plan and by the
9 zoning action on a repeated basis, that it needs to remain
10 agricultural in nature.

11 Now, much has been made about UTA, Salt Lake
12 County Emergency Operation Center, Valley Mental Health.
13 Those are quasi-public uses. Quasi-public uses were
14 allowed in the ordinance as set forth by Salt Lake County.
15 They are not allowed under amendments to the Salt--to the
16 City of South Salt Lake zoning ordinance of approximately
17 six months ago. The city council is desirous of retaining
18 that as agricultural in nature.

19 Your Honor, we believe our motion for summary
20 judgment is--is well taken. The Court cannot substitute
21 its judgment for the legislative body. Even though it may
22 be highly debatable, it is not arbitrary, it was not
23 capricious and there have been no allegations that it is
24 illegal.

25 And I'll submit it.

1 THE COURT: Mr. Parsons?

2 MR. PARSONS: Just a moment, your Honor. Thank
3 you. Appreciate the brevity that Mr. Hall engaged in and
4 I'll to do likewise here.

5 Mr. Hall pointed out that the--with regards to
6 the business license issue, that a procedure for appeal
7 thereof may have been appropriate at a later point--or at a
8 prior point in time. I point you out Exhibits C and D to
9 our memoranda and the body of our memoranda refers directly
10 to those issues.

11 The question of the business license and its
12 denial was addressed by the City of South Salt Lake in the
13 letters to Mr. Webber that are Exhibits C and D. Neither
14 of those letters contained any findings, neither of those
15 letters recite any evidence as to why not, they don't give
16 any reasons as to why not, for the issuance of--the failure
17 to--to reissue the business license, other than the fact
18 that they claim that he had an illegal license in the first
19 place, without saying what illegal meant or how he acquired
20 an illegal.

21 And neither of those letters, as is required by
22 the statute, provided any instructions as to how to appeal
23 the decision to not give the business license. We are
24 properly before the Court with regards to the issue of the
25 business license, having petitioned the Court for a review

1 of that subject matter.

2 The--the concept of--of the spot zoning was an
3 issue that Mr. Hall raised. In hearing after hearing,
4 Beehive representatives, Hy & Mike's representatives,
5 Sportsmen's representatives, in addition to Mr. Frederick
6 and Mr. Webber, have all appeared and testified relative to
7 the desire to make modifications to the zone, the rezone,
8 so that they can conduct their businesses in the properties
9 that they own.

10 So, we are not talking about a spot involving Mr.
11 Webber, it's just that he's the one that's brought the
12 action. And Mr. Webber might well benefit without Hy &
13 Mike or Beehive or Sportsmen's having to pay the attorney's
14 fees to bring the action, if the Court were to conclude
15 that in fact the nature of the property is commercial or
16 quasi-commercial as opposed to agricultural in character.

17 And finally, Mr. Hall did not address the
18 question of whether or not we were or were not qualified
19 under A-1 zoning to do home occupation--a home occupation
20 business. They haven't addressed that at all, they didn't
21 address it in their response to our memoranda, they haven't
22 addressed it in their oral arguments today.

23 And as I indicated previously, there's no
24 question but what the English common law, which has been
25 followed closely by the Utah Supreme Court and reiterated

1 in the cases that I have cited to you, indicates clearly
2 that if you don't prohibit us and give us an appropriate
3 reason why the police powers ought to be exercised, to not
4 allow you to engage in a certain kind of activity, then
5 you're entitled to use our property as you wish to do so.

6 That's it. Thanks, Judge.

7 THE COURT: Thank you.

8 Do you wish to respond to the last point?

9 MR. HALL: Your Honor, the reason we didn't
10 address the business license is because we believe it's
11 irrelevant and if it is relevant, they did not exhaust
12 their administrative remedies.

13 Mr. Webber's been represented from the beginning
14 by counsel. On July 2nd, 1999, he was issued--given a
15 letter saying that your license will not be--your
16 application for a license will not be granted and in
17 accommodation to you, until we--you re--run your zoning
18 application through the zoning process, we'll let you stay
19 there; but if it's denied, you must stop your business.

20 We believe the issue as to the business license,
21 number one, it's irrelevant to the petition for a review
22 under 10-1-1001. That's why--that's the statute under
23 which Mr. Parsons filed his action. Now, to bring in this
24 other issue is irrelevant and even if it is relevant here
25 today, they did not follow the administrative process and

1 the Court is without jurisdiction to hear that.

2 And I'll submit it.

3 THE COURT: Thank you, Counsel.

4 It's the Court's decision to grant the motion for
5 summary judgment of the defendant's. And my reasoning is,
6 as argued by Mr. Hall, it is not the Court's prerogative to
7 substitute its judgments for the city's and I find the
8 city's actions not to be arbitrary or capricious from the
9 arguments that have been articulated in oral argument and
10 also set forth in the briefs.

11 And to the extent that it's relevant, it seems to
12 the Court also that there has been a failure to exhaust
13 administrative remedies.

14 Mr. Hall, would you prepare an order to the
15 effect--

16 MR. HALL: Your Honor, I will.

17 THE COURT: --consistent with my ruling.

18 All right. Thank you, Counsel.

19 MR. HALL: Thank you, your Honor.

20 (Whereupon, this hearing was concluded.)

21

22 * * *

23

24

25

TRANSCRIBER'S CERTIFICATE


STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Toni Frye, do hereby certify:

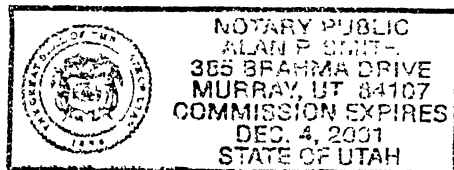
That I am a transcriber for Alan P. Smith, Certified Shorthand Reporter and a Certified Court Transcriber of Tape Recorded Court Proceedings; that I received an electronically recorded videotape of the within matter and under his supervision have transcribed the same into typewriting, and the foregoing pages, numbered from 1 to 38, inclusive, to the best of my ability constitute a full, true and correct transcription, except where it is indicated the Videotape Recorded Court Proceedings were inaudible.

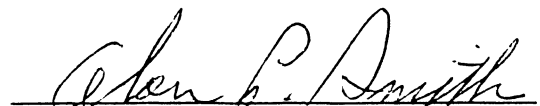
I do further certify that I am not counsel, attorney or relative of either party, or clerk or stenographer of either party or of the attorney of either party, or otherwise interested in the event of this suit.

Dated at Salt Lake City, Utah, this 1st day of February, 2001.


Transcriber

Subscribed and sworn to before me this 1st day of February, 2001.




Notary Public

(S E A L)

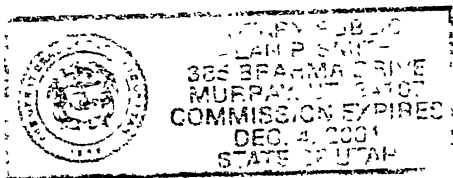
REPORTER'S CERTIFICATE

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Alan P. Smith, Certified Shorthand Reporter, Notary Public and a Certified Court Transcriber of Tape Recorded Court Proceedings within and for the State of Utah, do certify that I received an electronically recorded videotape of the within matter and caused the same to be transcribed into typewriting, and that the foregoing pages, numbered from 1 to 38, inclusive, to the best of my knowledge, constitute a full, true and correct transcription, except where it is indicated the Videotape Recorded Court Proceedings were inaudible.

I do further certify that I am not counsel, attorney or relative of either party, or clerk or stenographer of either party or of the attorney of either party, or otherwise interested in the event of this suit.

Dated at Salt Lake City, Utah, this 2nd day of February, 2001.



(S E A L)


Notary Public

ADDENDUM 8

**Order Granting Defendant's Motion for Summary Judgment and
Denying Plaintiffs' Motion for Summary Judgment**

H. CRAIG HALL (1307)
SOUTH SALT LAKE CITY ATTORNEY
Attorney for Defendant
220 East Morris Avenue #200
South Alt Lake City, Utah 84115
Phone (801) 478-3607

DENNIS C. FERGUSON (A1061)
WILLIAMS & HUNT
Attorneys for Defendant
257 East 200 South, Suite 500
Post Office Box 45678
Salt Lake City, Utah 84145-5678
Phone (801) 521-5678

IN THE THIRD JUDICIAL DISTRICT COURT, COUNTY OF SALT LAKE
STATE OF UTAH

TY WEBBER and STATEWIDE BAIL	:	
BONDS,	:	ORDER GRANTING DEFENDANT'S
	:	MOTION FOR SUMMARY
Plaintiffs,	:	JUDGMENT AND DENYING
	:	PLAINTIFFS' MOTION FOR
v.	:	SUMMARY JUDGMENT
	:	
CITY OF SOUTH SALT LAKE,	:	
	:	Civil No. 000901508
Defendant.	:	
	:	Judge William B. Bohling
	:	
	:	

This matter came before the Court on September 18, 2000 for oral argument on the following motions:

1. Defendant City of South Salt Lake's Motion for Summary Judgment;
2. Plaintiffs' Motion for Summary Judgment;

3. Plaintiffs' Motion to Continue Oral Argument;
4. Plaintiffs' Objection to Defendant's Motion for Summary Judgment;
5. Defendant's Motion to Strike Affidavits.

Prior to oral argument, the Court had reviewed the legal memoranda, affidavits and exhibits submitted by the parties. Having considered these pleadings and the arguments of counsel and having issued its ruling from the bench at the conclusion of oral argument on September 18, 2000, it is hereby

ORDERED AND ADJUDGED as follows:

1. Plaintiffs' Motion for Continuance, Plaintiffs' Objection to Defendant's Motion for Summary Judgment, Defendant's Motion to Strike Affidavits are denied. For purposes of ruling on the Motions for Summary Judgment, the Court considered all of the pleadings submitted by the parties.

2. The Motion for Summary Judgment of Defendant City of South Salt Lake is hereby granted. Plaintiffs filed their Petition for Review of Decision and Amended Petition for Review of Decision seeking to have this Court judicially review the legislative zoning decision of the City of South Salt Lake. Plaintiffs' Petition is filed pursuant to Utah Code Ann. § 10-9-101 *et seq.* and seeks review of a zoning decision pursuant to § 10-9-1001. In conducting the narrow statutory review contemplated, this Court must limit its review to the record where the record is available and adequate. The Court finds that the legislative record is available and is adequate. Based upon the legislative record,

the Court concludes that Defendant's legislative determination denying Plaintiffs' request to re-zone his property from A-1 (Agriculture) to Business-A was not arbitrary, capricious, or illegal. For this reason and the other reasons set forth in Defendant's supporting memoranda and exhibits, Defendant's Motion for Summary Judgment is well taken and granted.

3. Plaintiffs' Motion for Summary Judgment is hereby denied. In addition to seeking reversal of Defendant's zoning decision based on the legislative record, Plaintiffs also argue that they are entitled to a zoning change and/or zoning variance because of a business license issued by Salt Lake County to Plaintiffs to operate their bail bonds business as a home prior to the property being annexed into the City of South Salt Lake on October 1, 1998. The Court concludes that the Plaintiffs have failed to exhaust their administrative remedies by failing to seek administrative review by the business license hearing board of City of South Salt Lake of the denial of Plaintiffs' request to issue them a business license. Thus, this Court lacks subject matter jurisdiction to consider the issue. For these and the other reasons set forth in Defendant's memoranda and exhibits, Plaintiffs' Motion for Summary Judgment is hereby denied.

Based on the foregoing legal findings and conclusions, and for the reasons more fully set forth in Defendant's legal memoranda, Plaintiffs' Petition for Review and the claims and causes of action stated therein are hereby dismissed with prejudice and upon

the merits, no cause of action. Each of the parties shall bear his or its respective costs and attorney's fees incurred herein.

DATED this _____ day of September, 2000.

BY THE COURT:

By

WILLIAM B. BOHLING
District Court Judge

83019.1

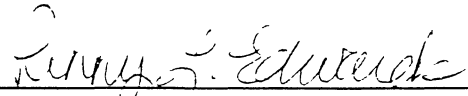
AFFIDAVIT OF SERVICE

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

PENNY L. EDWARDS, being duly sworn, says that she is employed in the law offices of Williams & Hunt, attorneys for Defendant, City of South Salt Lake, herein; that she served the attached **Order Granting Defendant's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment** in Civil No. 000901508 before the Third Judicial District Court, Salt Lake County, State of Utah upon the parties listed below by placing a true and correct copy thereof in an envelope addressed to:

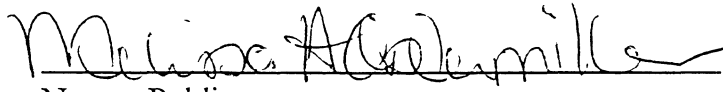
Counsel for Plaintiff
William B. Parsons III
440 East 3300 South
Salt Lake City, Utah 84115

and causing the same to be mailed first class, hand delivered, on the 11 day of September, 2000.

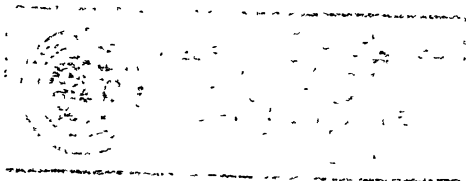


Penny L. Edwards

SUBSCRIBED AND SWORN TO before me this 10th day of September, 2000.



Notary Public



ADDENDUM 9

**Business License Granted to Statewide Bail Bonds by
Lake County, July 23, 1998**

SALT LAKE COUNTY

Expires last day of:

DEC 1998

STATEWIDE BAIL BONDS

3350 S 900 W
SALT LAKE CITY UT 84119-

Issue Date: 11/04/98

Owner/Agent: TY
WEBBER

Basic Fees

BASIC FEE

1 \$40.00

Regulatory Fees

PHONE AND MAIL

1 \$15.00

Business Type:

Account Number: 37430


Chair, Salt Lake County Commission

This license is granted to the Named Company to do the specified business in Salt Lake County at the above address. This Company has complied with the provisions of the Ordinances of Salt Lake County governing this type of business and has paid the County Treasurer the necessary amount to operate such business for the period stated.

It shall be unlawful for any person to engage in business within Salt Lake County without first procuring a business license.
(Salt Lake County Ordinance Sec. 5.16.020)

This license is not transferable between owners and/or locations. This license is valid only for type of business stated.

---- Post this License in a Conspicuous Place at Business Location ----

Business License

ADDENDUM 10

**Letter from South Salt Lake City to Tyron (sic) Webber and
Statewide Bail Bonds, July 2, 1999**



PHONE 801 / 483-6000
FAX 801 / 483-6001

220 EAST MORRIS AVENUE • SOUTH SALT LAKE CITY, UTAH
84115-3284

July 2, 1999

Tyron Webber
Statewide Bail Bonds
3350 South 900 West
South Salt Lake, Utah 84119

RE: Business Licensing

Dear Mr. Webber;

You submitted an application for a business license at the above location. We have been investigating the circumstances regarding the operations and have finally arrived at the following conclusions:

1. At the Time of annexation, you were operating under a business license issued by Salt Lake County.
2. The City of South Salt Lake honored that license by allowing operations of a bail bond office to continue as a nonconforming business with the provision that you meet all building code requirements for a business (requires an inspection and making any needed corrections for an approval) and not maintain any outside storage.
3. Since then we have discovered that the business license issued to you by the County was in violation of the zoning regulations of the County and should NOT have been issued. Therefore, your business was NOT a legally operating business at the time of annexation and, as such, does not have any legal nonconforming status.
4. The property is presently found within an A-1 zone which does NOT allow businesses of your type (the same as the County).
5. The City will not issue a new license for the property but, in the interest of equitable treatment and due to annexation issues, will allow a reasonable time for the operations to be relocated before taking any steps to force complete cessation of operations as noted in number 2 herein. We will allow operation for the remainder of the year (to December 31, 1999) provided the items in number 6 herein are met.

6. In order to continue ANY operations, you need to comply with the terms of the original determination (see number 2 herein) by obtaining an inspection, making all necessary corrections, and ceasing all outside storage within 30 days of this letter OR you may cease all operations and relocate within the same time frame. You decide the best course for you.

Should you desire to continue with a request for a change in zoning, you need to finish the Community Council process and submit a petition to the Planning Office, and, at the same time, request a review of the General Plan. Be advised that the chances of such happening quickly are slim, and the likelihood of any approval, at this time in the City's evolution and given the history of the area and the General Plan process, are negligible (the Planning Commission has held a Public Hearing on a request to change some zoning in the area and determined that they would not support any such change without a change in the General Plan of the City occurring first - no such change has occurred or is even in the works).

Should you have further questions, feel free to contact the Community Development Department at 483-6011. For inspection scheduling, please call Business Licensing at 483-6063

Sincerely,



Bruce Talbot, Director
Community and Economic Development



Cherie Wood
Business License Official

cc: Craig Hall, City Attorney
Corey Carlson, Enforcement Officer
Greg Sauter, Inspector